



Refocus. Reform. Renew.

A New Transportation Approach
for America

2008



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

Americans have long enjoyed the benefits of what is without a doubt the world's safest, most efficient, effective, and extensive transportation network ever constructed. Our highways connect cities, citizens, and commerce. Everyday, our transit systems move millions of people to work and home again. It is a system that helps keep shipping costs low, while enabling Americans to live where and how they want.

Unfortunately, it also is a system at risk. Over the past few decades, we've lost our focus when it comes to transportation and now spread money over more than a hundred different programs, diluting the record levels of federal funds taxpayers are investing every year. Meanwhile, projects to nowhere are lavished with funds while projects to everywhere else languish in red tape and regulation.

Without a doubt, our approach to transportation is absolutely broken in a way that no amount of tweaking, adjusting or adding new layers will improve. And the sad reality is that Americans have lost confidence in our ability to invest their transportation dollars either wisely or well. It is time instead for a new, a different, and a better approach.

In this plan, we offer just such a new approach. It is an approach that creates easier and more sustainable ways to pay for and build roads and transit systems. It delivers fewer traffic tie ups, better transit services and a stronger economy. It will make our roads and bridges even safer. It will protect and improve the environment. And it will give Americans new confidence that the money they invest in transportation will actually deliver results.

In short, the plan lays out the Administration's framework for completely overhauling the way U.S. transportation decisions and investments are made. It is intended to spur local, state and federal debate about how best to incorporate the new reforms into the highway legislation Congress will begin work on this fall.

As you will see, we have not included funding levels as part of this plan. Clearly, the next Administration and the next Congress should exercise their prerogative for setting those levels. But far more important, no conversation about transportation spending should take place without first establishing a coherent strategy and framework for investing Americans' hard earned money.

Trying something new is never easy. But we must if we are going to keep our cities competitive. We must if we are going to keep our economy vibrant. And we must if we are going to get America moving again.

Sincerely,

A handwritten signature in blue ink, reading "Mary E. Peters", is positioned below the word "Sincerely,".

Mary E. Peters

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Central Themes in the Reform Proposal

1. A clearer and more focused Federal role.

The proposal focuses and clarifies the Federal role in surface transportation by...

- Focusing most Federal formula funding on the areas of the greatest Federal interest: (1) transportation safety, (2) the Interstate Highway System plus other highway facilities of national interest and (3) major metropolitan areas; and
- Providing discretionary grant funding to support multi-state corridor projects, bottleneck projects, projects of national or regional significance, and innovative metropolitan responses to urban congestion.

2. A data- and technology-driven approach to safety.

The proposal strengthens the effectiveness and efficiency of Federal surface transportation safety programs by...

- Emphasizing the importance of risk-based, data and technology driven approaches that recognize the diversity of safety challenges across the U.S.;
- Replacing a variety of narrowly-focused safety programs with an integrated safety grant program that builds on the successes of the existing State-level Strategic Highway Safety Plans; and
- Encouraging the use of crash avoidance technologies.

3. Increased State and municipal flexibility.

The proposal increases States' and metropolitan areas' flexibility to fund their greatest transportation priorities by ...

- Consolidating dozens of stove-piped highway and transit programs into three multi-modal funding programs;
- Empowering a single institutional body, chosen through consensus, to plan and fund a major metropolitan-area's transportation projects, regardless of mode; and
- Granting funding recipients broad eligibility to invest in the projects likely to yield the greatest returns.

4. More rational (and accountable) investment decisions.

The proposal strengthens the basis for making transportation investment decisions by...

- Asking States and metro areas to set performance goals and document progress toward meeting them;
- Offering the potential for additional Federal grant funds to high performing grant recipients; and
- Utilizing benefit-cost analyses for projects receiving substantial Federal support.

5. Encouragement of more efficient pricing and leveraging of Federal resources.

The proposal encourages States and metro areas to explore innovative transportation financing mechanisms by...

- Allowing jurisdictions to toll Interstates and other major highways (while conditioning their use of toll revenues);
- Expanding the use of public private partnerships;
- Broadening the availability of Transportation Infrastructure Finance and Innovation Act credit assistance;
- Removing the volume cap on private activity bonds and making them more flexible; and
- Allowing jurisdictions greater flexibility to create and use state infrastructure banks.

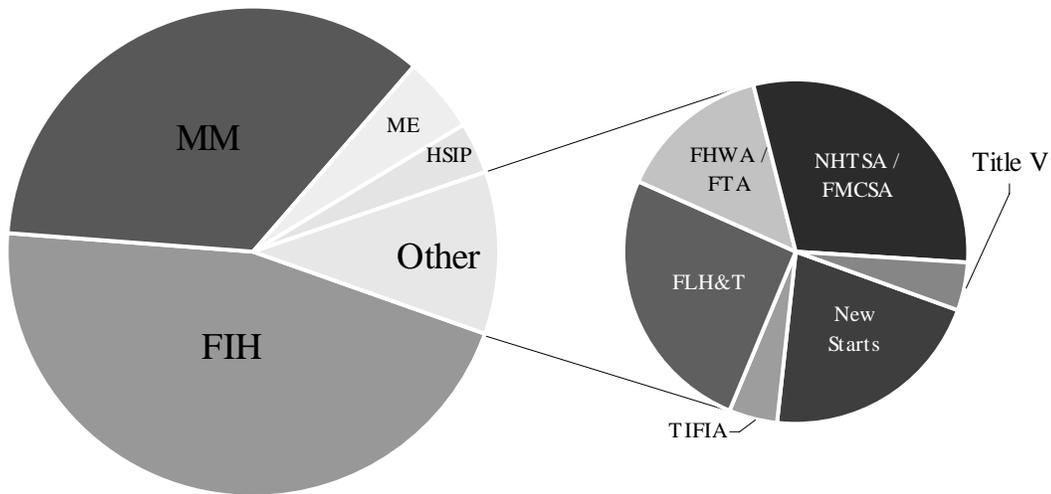
6. More efficient and effective environmental stewardship.

The proposal allows States and metro areas to protect the environment more efficiently and effectively by...

- Requiring State and metropolitan grant recipients to set and track progress toward environmental performance goals;
- Reforming the environmental process; and
- Creating a pilot program under which participating States and metro areas are required to meet Federally-designated performance targets, in exchange for which they receive substantial regulatory relief and a clear mandate to consider impacts other than those to historic properties and parkland when selecting a transportation alternative.

Ratio for the Distribution of Overall Funding

This reform proposal does not recommend program-specific funding levels. However, the pie chart below indicates an approximate ratio for distribution of overall funding (regardless of its level) between various programs.



- Federal Interest Highway Program ("FIH")
- Metro Mobility Program ("MM")
- Mobility Enhancement Program ("ME")
- Highway Safety Improvement Program ("HSIP")
- New Starts capital grants
- Transportation Infrastructure Finance & Innovation Act ("TIFIA") Program
- Federal Lands Highways & Transit ("FLH&T") Program
- FHWA and FTA research & administration
- NHTSA and FMCSA activities
- Research programs previously funded under Title V of SAFETEA-LU ("Title V")

The Case for a New Surface Transportation Economic Model

Setting the Context

Our country is at a transportation policy crossroads. For the first time since the creation of the Interstate Highway System, we have a promising opportunity to come together and completely re-assess our approach to financing and managing surface transportation systems. For too long, we have tolerated exploding highway congestion, unsustainable revenue mechanisms, and spending decisions based on political influence as opposed to merit.

The most pressing transportation problem of the 21st Century is not connectivity, as in the second half of the 20th Century, or connecting farms to markets, as in the first half. Today, the most important challenge is the consistent, precipitous decline in transportation system performance and the increased politicization of transportation investment decisions at a time when the efficiency of our transportation networks is more critical than ever to our prosperity.

Now, thanks to technological breakthroughs, changing public opinion, and highly successful real-world demonstrations around the world, it is clear that a new path is imminently achievable if we have the political will to forge it. That path must start with an honest assessment of how we pay for transportation, not simply how much (our current focus). In fact, our continued transportation financing challenges are in many ways a symptom of the following underlying policy failures.

Current Problems with the Federal Surface Transportation Program

Today's Federal surface transportation programs suffer from five major problems: (1) a loss of a sense of direction, (2) a dramatic decline in system performance, (3) wasteful spending and poor investment decisions, and (4) an over-reliance on a funding mechanism – the fuel tax – that is increasingly ineffective, unpopular, and unsustainable, exacerbated by (5) a looming shortfall in the Highway Trust Fund (“HTF”), which serves as the principal Federal funding source for surface transportation programs.

1. Loss of a Sense of Direction or Purpose

There is widespread acknowledgement that the Federal surface transportation program lost its sense of direction when the Interstate Highway System was substantially completed more than 25 years ago. Many independent stakeholders, including the following, have reached the same essential conclusion – that the current Federal program is broken due to a lack of clear purpose.

- **Government Accountability Office:**

Many current programs are not effective at addressing key transportation challenges such as increasing congestion and freight demand. They generally do not meet these challenges because Federal goals and roles are unclear, many programs lack links to needs or performance, and the programs often do not employ the best tools and approaches. The goals of current programs are numerous and sometimes conflicting. Furthermore, states' ability to transfer highway infrastructure funds among different programs is so flexible that some program distinctions have little meaning. Moreover, programs often do not employ the best tools and approaches; rigorous economic analysis is not a driving factor in most project selection decisions and tools to make better use of existing infrastructure have not been deployed to their full potential. Modally-stove-piped funding can impede efficient planning and project selection and, according to state officials, congressionally directed spending may limit the states' ability to implement projects and efficiently use transportation funds., *Government Accountability Office, “Surface Transportation: Restructured Federal Approach Needed for More Focused, Performance-Based, and Sustainable Programs” (GAO-08-400), March 2008.*

- Urban Land Institute and Ernst and Young:

Existing federal infrastructure policy neither produces effective regional solutions for congestion and pollution nor provides value for spending tax-payer dollars. Of great importance, current policy fails to address or achieve essential national goals for ensuring efficient and productive movement of goods and people in the future. *Infrastructure 2008*.

- Staff of the Brookings Institution:

Each reauthorization cycle is dominated by parochial interests around funding. In particular are the debates over donors and donees... This approach is anathema to achieving a true national purpose and vision—and turns the program into one of revenue distribution instead of one designed to meet national needs. *4/9/08 Testimony of Robert Puentes, Fellow, before the House Committee on Transportation and Infrastructure*.

- National Surface Transportation Policy and Revenue Study Commission:

The absence of national investment priorities under our current surface transportation programs has been frequently raised, illustrated by long lists of highway and transit programs authorized in SAFETEA-LU, many of which are heavily earmarked (see Exhibit 6-1). Many such categorical programs address narrow issue areas, arguably with meritorious intent, but with little or no overarching national interest. The Commission believes that surface transportation programs should be reconstructed from a “clean slate” to allow for radical program reforms. *Report of the National Surface Transportation Policy and Revenue Study Commission, December 2007*.

Since the Interstate Highway System was completed, Federal surface transportation programs serving a variety of purposes have proliferated to the point where we now have 102 different programs administered by five separate modal agencies. Trying to be all things to all people has proven to be an unsuccessful strategy. Many programs do not serve national or even regional purposes; some have been co-opted by special interests; and despite the proliferation of new programs, few programs directly address congestion, which is a pressing national problem that threatens our economy, our environment, and our way of life. In recognition of this problem, our Federal surface transportation program needs to be refocused on the areas that are of the greatest Federal interest.

2. *A Dramatic Decline in Transportation System Performance*

The expansion of the U.S. population and economy has placed increasing pressure on transportation networks that were largely laid out and developed prior to 1970. Expansion of these networks has generally failed to keep pace with population and economic growth.

Congestion may also distort urban and suburban development, encouraging both individuals and firms to relocate away from urban centers into less congested, lower density, peripheral areas. Unfortunately, these movements tend to lock individuals into automobiles and firms into truck transport, exacerbating congestion and the associated declines in system performance.

Inevitably, this higher utilization of existing capacity has led to congestion, delays, reduced reliability, and adverse environmental consequences. The Texas Transportation Institute estimates that congestion has doubled between 1982 and 2005 (National Transportation

Statistics, Table 1-63: Annual Person-Hours of Highway Traffic Delay Per Person, 2008). As congestion worsens, the cost of congestion increases exponentially. The cost of urban roadway congestion has increased by more than 50% between 1998 and 2005 alone. (National Transportation Statistics, Table 1-66: Annual Highway Congestion Cost, 2008).

Congestion has negative effects on the environment and human health. Stop-go cycles in heavy congestion also disproportionately increase fuel consumption, producing more greenhouse gas emissions and pollutants. Gasoline wasted through congestion may be as much as 2.9 billion gallons of fuel annually. USDOT's proposal would dramatically reduce these inefficiencies, translating into greenhouse gas emissions reductions and contributing to the effort to combat global climate change.

3. Wasteful Spending and Poor Investment Decisions

Wasteful spending over the last few decades has further degraded our ability to direct our limited transportation resources to the most productive investments. The clearest evidence of our failure to prioritize investments has been the disturbing growth of Congressional earmarks in surface transportation reauthorization bills, from a handful in the 1982 bill to more than 6,000 in the 2005 bill, SAFETEA-LU. The amount of the SAFETEA-LU earmarks was more than \$23 billion. In a September 2007 report by the DOT Inspector General, a review was done of 8,056 earmarked projects within the Department's programs that received more than \$8.54 billion for FY 2006. Ninety-nine percent of the earmarks studied "either were not subject to the agencies' review and selection process or bypassed the states' normal planning and programming processes." Accordingly, the recent Federal earmarks studied by DOT rarely supported the entirety of any given project, comprising on average only 10% of the total project costs. In addition, Federal earmarks are often inconsistent with State or local transportation plans. For these reasons, many earmarks languish, unspent, while high-priority projects may be delayed or cancelled for lack of funding; alternatively, funds may be re-allocated from higher priorities to fill the funding gaps for earmarked projects.

Unfortunately, poor investment decisions aren't limited to earmarks. Formula funding in the Federal surface transportation program is not contingent on grant recipients performing – and few grant recipients actually consider – economic analyses of project costs or benefits. Not surprisingly, since the completion of the Interstate Highway System, the returns on public highway investments have plummeted to single digits. A recent report concluded that returns on investment have plummeted, at least in part, because large highway investments have been undermined by inefficient highway pricing and investment policies (Shirley, Chad and Winston, Clifford, *Firm Inventory Behavior and the Returns from Highway Infrastructure Investments*, Journal of Urban Economics, Volume 55, Issue 2, March 2004, pp. 398-415). Investment decisions by States and localities need to be prioritized and based on thorough economic analyses, and grantees should be held accountable for making progress towards performance goals. In recognition of the impacts of transportation on the environment, such performance goals should include not only traditional transportation areas of emphasis (condition and performance of transportation infrastructure, highway safety, etc.), but also environmental outcomes, such as air quality, noise, ecosystem protection, and quality of life. Economic analysis should incorporate environmental impacts both by monetizing their benefits and costs

and, in some instances (e.g., social and community impacts attributable to projects) through qualitative methods.

4. *Moving Beyond the Fuel Tax*

At the heart of the problem with the nation's surface transportation programs is a steadfast reliance on an increasingly ineffective, unsustainable, and unpopular source of revenue, the fuel tax. Over 90% of Federal surface transportation funding is derived from Federal taxes on gasoline and diesel fuel. However, as many independent stakeholders have concluded, the fuel tax is unlikely to be able to respond to our future transportation challenges:

- Government Accountability Office (“GAO”):

Fuel taxes are attractive because they have provided a relatively stable stream of revenues and their collection and enforcement costs are relatively low. However, fuel taxes do not currently convey to drivers the full costs of their use of the road – such as the costs of wear and tear, congestion, and pollution. *5/8/08 Testimony of Patricia Dalton, Managing Director, Physical Infrastructure Issues, before the House Committee on Transportation and Infrastructure.*

- Transportation Research Board:

Although the present highway finance system can remain viable for some time, travelers and the public would benefit greatly from a transition to a fee structure that more directly charged vehicle operators for their actual use of roads. *“The Fuel Tax and Alternatives for Transportation Funding.” TRB Special Report 285, (2006).*

- National Surface Transportation Infrastructure Financing Commission:

Reliance on fuel taxes may have been an effective funding approach in the second half of the 20th century, but it may not be sufficient to address the pressing needs of the first half of the 21st century and beyond. *“The Path Forward: Funding and Financing our Surface Transportation System.” February 2008.*

As one of its primary objectives, the next long-term Federal surface transportation legislation should seek to accelerate a transition away from these taxes. At the State level, this transition is already well underway. Nationwide, fuel taxes now represent less than 50% of the revenue generated for highway expenditures. Unfortunately, in some cases, fuel taxes are being replaced with revenue mechanisms that are even less correlated to the true costs of using transportation systems. As a policy matter, the Administration strongly supports development of a surface transportation financial model in which system user charges relate more closely to the true marginal costs of congestion, construction, operation and maintenance. Today, that relationship is either tenuous or non-existent throughout most of the U.S. The next comprehensive surface transportation authorization can play a critical role in facilitating and supporting major demonstrations that will lay the groundwork for a more sweeping transition that could take place over the next ten to fifteen years.

Because fuel taxes are levied regardless of when, where, or how someone drives, the public maintains a misperception that highways are "free." As with any scarce resource that is perceived to be free, demand chronically exceeds supply, especially in metropolitan areas during

peak commuting hours. In the case of highways, this peak demand problem has led to debilitating congestion in every medium or large U.S. city.

A highway funding model that relies on fuel tax revenues also becomes increasingly unsustainable as the U.S. moves towards increased energy independence, greater fuel economy in automobiles, development of alternative fuels, and reduced emissions. As we make progress toward these environmentally and economically beneficial objectives, we can expect further trends presaging reductions in the amount of fuel tax revenue available for investment in transportation, which will further exacerbate funding shortfalls in the HTF and will highlight contradictions in national policy objectives.

Our traditional policies, which favor political allocation of gas taxes on a “pay as you go” basis, also don’t do enough to attract the hundreds of billions of dollars of private capital that are available for investment in our transportation infrastructure. Alternative revenue sources, including both revenue tolling and congestion pricing, are a preferable alternative. With recent technological innovations tolling, whether used for revenue purposes or congestion pricing, has also become easier and less expensive to implement.

Around the country, a growing number of public opinion polls reflect the unpopularity of fuel taxes, particularly when compared to open-road, electronic tolling. A survey of public opinion surveys conducted in November 2007 for the Transportation Research Board by the research firm NuStats found that “in many parts of the U.S., a wide gap exists between elected officials’ perceptions of what the public thinks about tolling and road pricing and what public opinion actually is.” Summarizing their findings, the report said, “in the aggregate there is clear majority support for tolling and road pricing. Among all surveys, 56 percent showed support for tolling or road pricing concepts. Opposition was encountered in 31 percent of the surveys. Mixed results (i.e., no majority support or opposition) occurred in 13 percent of them.” In the 2007 edition of their Annual Survey of U.S. Attitudes on Tax and Wealth, the Tax Foundation wrote, “the one surprise this year was at the state and local level, where gas taxes were viewed as the least fair tax. That’s the first time any state-local tax has edged famously-disliked local property taxes out for the honor of most unfair tax.”

5. Highway Trust Fund Shortfall

The Highway Trust Fund is the principal source of funding for our Nation’s highway, highway safety, and public transportation programs. The President’s 2009 budget projections reflect a continuing downward trend in the Highway Trust Fund cash balances. The trust fund has two accounts – a Highway Account that funds the Federal Highway Administration, the National Highway Traffic Safety Administration, and the Federal Motor Carrier Safety Administration programs – and a separate Mass Transit Account that funds Federal Transit Administration programs. According to Administration projections, by the end of the SAFETEA-LU authorization period in 2009, the Highway Account will suffer a \$3.2 billion shortfall. The Mass Transit Account (expected to remain solvent through FY 2011), will have an estimated balance of \$4.4 billion by the end of 2009, leaving a net total of \$1.2 billion in the combined HTF. As we look to the future, shortfalls in the HTF are projected to continue -- providing further evidence of the need to re-examine how surface infrastructure is funded in this country.

Solving the Problem

1. A More Focused Federal Role

Until we decide what our National transportation priorities are, and what roles are appropriate for Federal, State, and local government as well as the private sector, we will be unable to adequately address our nation's infrastructure needs. USDOT believes that the Federal role in transportation should be more limited than it is today, concentrating primarily on:

- *Maintaining and improving the condition and performance of the Interstate Highway System.* Dating back to the commerce clause of the Constitution, the Federal government has had a responsibility for – and commitment to – interstate trade and travel. Over the past five decades that commitment has been embodied by the Interstate Highway System, which encompasses slightly more than 1% of the nation's highway miles, but carries approximately one quarter of U.S. highway traffic and three quarters of long-haul truck traffic. This commitment is clearly in the Federal interest, and should continue.
- *Reducing congestion in major metropolitan areas.* According to the Brookings Institution, the 100 largest metropolitan areas in the U.S. are home to 65% of the nation's population and 68% of the nation's jobs, and generate 75% of the country's economic output, and in 2005, 95% of the nation's trade moved through these metro areas. Unfortunately, these same cities are experiencing a growing crisis of congestion and metropolitan mobility. According to the Texas Transportation Institute, on highways in major U.S. metropolitan areas, between 1982 and 2005 hours of delay per traveler nearly tripled and total delay and wasted fuel increased more than four-fold. In addition to its impacts on mobility, this congestion also acts as an impediment to efforts – whether at the Federal, State, or local level – to improve air quality and reduce transportation's share of greenhouse gas emissions. Consequently, there is a clear Federal interest in our nation's major metropolitan areas, and particularly in incentivizing State and local officials to pursue more effective congestion relief strategies. Additionally, targeted incentives to use rail as an alternative mode to highway movement can help to relieve congestion and lower the amount of highway maintenance that is associated with the truck traffic that is diverted.
- *Making strategic investments to improve highway safety.* Each year there are six million crashes on the U.S. highway network, generating over 40,000 fatalities and over \$200 billion in related economic costs and attendant environmental impacts. These costs are unacceptably high, and there is a clear Federal interest in reducing them. This interest is most effectively pursued through Federal investments in a strategic, data-driven approach to improving highway safety. Such an approach should also expand flexibility for grantees to re-allocate resources as challenges evolve.
- *Improving the condition and performance of transportation systems that access Federal and tribal lands.* The Federal government has responsibility for managing many of the roads and transportation systems that serve national parks, refuges, forests, and other public lands. It also retains Indian trust responsibilities to work with tribes on a

government-to-government basis to support roads and transportation systems that provide access to and mobility within Indian reservations. New approaches, such as a consolidated program or variable pricing, may help to address these responsibilities most effectively.

- *Using Federal dollars to leverage non-Federal resources.* By specifically seeking to leverage non-Federal resources, the same amount of Federal dollars can be used to capitalize substantially more projects than happens in today's program construct. With a growing array of non-Federal financial resources now available to project sponsors, Federal grants can increasingly play a "gap financing" role. Moreover, as previously mentioned, there are a variety of reasons to believe that the fuel tax and Federal grants are unlikely to provide the most effective means of providing these resources. When used creatively and aggressively, Federal funding may serve as an effective means of leveraging additional non-Federal resources (whether from local or State governments or from the private sector). For example, partnering with private sector railroads can leverage Federal dollars. Several recent examples provide positive results. This financial leveraging function represents another key role for the Federal government.
- *Establishing quality and performance standards.* Measuring and improving performance must be an integral part of a new national transportation program structure. For too long, transportation "success" has been measured in relation to the size of the capital stock as opposed to how well that capital stock is producing positive mobility, safety, and other benefits in a sustainable way. Levels of congestion, quality of pavement, safety of bridges, transit load factors, and availability and reliability of information are among the most important indicators of how well the Federal program is achieving its objectives. States and metropolitan areas receiving Federal funds should be asked to establish performance targets and measure and publish their achievement of these targets. In addition, discretionary grant criteria should be used to further incentivize States and metropolitan areas to allocate resources efficiently to advance clearly defined performance objectives. The development of standardized performance areas and measures would facilitate the application of benefit-cost and cost-effectiveness analysis of projects. A strong performance emphasis will also greatly expand the ability of transportation users to participate in the transportation planning, funding and management process. Current approaches are neither appropriately transparent nor accountable to transportation system users.
- *Ensuring that the transportation system protects the environment while enhancing mobility.* Transportation policies and activities must support national goals for protection of the human and natural environment, balanced with our mobility objectives. Transportation projects must be delivered more quickly, while mitigating environmental consequences at the area-wide and project level. A major environmental challenge – and one that surface transportation reforms should take into account – is global climate change. The Department of Transportation has begun to study the impact of climate change on transportation infrastructure and believes that the links among climate change, transportation infrastructure, and transportation operations deserve sustained attention. The improved pricing of our highway system is a potentially vital piece of our national

climate change mitigation strategy. As roads are priced, congestion as well as emissions decrease. For projects receiving a substantial amount of Federal funding, the Federal government must continue to provide environmental oversight and stewardship. Consideration of multimodal freight strategies can meet this objective. Moving intermodal freight by rail is energy efficient, and therefore is an environmentally-friendly alternative. The Department of Energy calculates that the Class I railroads use 345 Btu's per ton-mile while truck uses 3,476 Btu's per ton-mile. Actual figures are dependent on the commodity and type of train, and other studies have demonstrated results by comparing specific corridors and freight which are mode-interchangeable. Studies have shown that freight rail is between three and four times as efficient when intermodal containers are moved by rail instead of highway.

- *Supporting transportation research in areas of national significance.* Since its founding in 1966, USDOT has played a role in supporting and conducting transportation-related research. Congressional earmarking has dramatically undermined the ability of USDOT to implement any sort of coherent research agenda. The next Federal surface transportation legislation should give far greater deference to the expertise of Departmental officials to allocate research resources. In fact, Congressional research earmarking weakens the Department's ability to attract talent and work on high-risk, breakthrough areas that may not be sufficiently addressed by the private sector. Instead, earmarking leads to duplication of work and stifles innovation.

This re-focusing of the Federal role should not be interpreted as a denial of the importance of other transportation needs (e.g., mobility and transportation for disadvantaged populations in rural areas). The Administration recognizes the breadth of our nation's transportation challenges, and believes that the Federal government has neither the resources nor the authority to solve all of them. In keeping with our Federalist system, the Administration believes that we should deploy Federal transportation resources in areas fundamentally in the Federal interest, and simultaneously empower States and localities to use their own resource to best meet State and local needs. Each additional Federal dollar that is shifted to increase support for interstate, metropolitan mobility, or safety projects would free up a corresponding State or local dollar that would otherwise have been required to fund those projects, and which the State or locality could now use to satisfy its highest transportation priorities. These "newly-freed" State and local dollars would also be unencumbered by the administrative burdens typically associated with receipt of Federal funding.

2. *A Continued Emphasis on Safety*

Safety is USDOT's top priority and during the last seven years the Department's efforts have produced impressive results. In 2006, the number of people who died on the Nation's roads fell to the lowest highway fatality rate ever recorded and the largest one-year drop in total deaths in 15 years. That year, 42,642 individuals lost their lives, equating to an overall fatality rate of 1.41 deaths per vehicle miles traveled (VMT) – the lowest rate ever recorded. This translates into over 10,000 lives saved despite an increase in the number of drivers, vehicles, and VMT on our Nation's roadways.

In 2006, passenger vehicle fatalities continued a steady decline to 30,521, the lowest annual total since 1993. The fatality rate per 100 million VMT for passenger vehicles also reached an all time low of 1.10. In addition, the number of people suffering incapacitating injuries in 2006 was 26 percent lower than in 2000. This suggests that improved vehicle safety equipment that has saved lives may be even more effective in reducing serious injuries. In 2006, the large truck fatal crash rate (1.94 fatal crashes per 100 million large truck VMT) reached its lowest point since the Department began tracking these figures 30 years ago.

USDOT continues to work towards meeting the 1.0 fatality rate goal and believes that the coming surface authorization process affords the Nation an important opportunity to do so through innovation and collaboration with all stakeholders.

As for current law, the Department believes that the significant progress made under SAFETEA-LU with respect to State development of strategic highway safety plans provides a solid foundation and framework to advance future safety goals in reducing crashes, fatalities and injuries on our nation's highways. Each State is required to develop and implement, on a continuing basis, a highway safety improvement program that includes components for planning, implementation, and evaluation of safety programs and projects. States have demonstrated both the willingness and capability to assume responsibility for identifying and implementing actions to address critical safety needs. Strict adherence to national program structures may undercut a State's ability to effectively address its unique problems and meet its performance goals. Therefore, the combined highway safety grant programs in this proposal are intended to significantly reduce traffic fatalities and serious injuries by adopting a data-driven approach and allowing States the flexibility to target funds to meet their most critical safety needs.

3. Direct Pricing of Roads

The Administration urges policy makers to greatly expand opportunities for road pricing because of the many benefits it can provide to the traveling public and to the economy. To be clear, during the life of the next authorization, the Administration does not expect that direct road pricing would replace traditional fuel taxes as the primary means of financing the Federal transportation programs. However, in many cases, depending on local conditions, pricing provides a powerful tool for improving mobility for individuals and businesses.

Virtually every economist who has studied transportation says that direct pricing of road use, similar to how people pay for other utilities, holds far more promise in addressing congestion and generating sustainable revenues for re-investment than do traditional gas taxes. And thanks to new technologies that have eliminated the need for toll booths, the concept of road pricing is spreading rapidly around the world. The brilliance of road pricing is that it achieves at least four major policy objectives simultaneously.

First, it will immediately reduce congestion and deliver substantial economic benefits. Drivers have proven in a growing array of road pricing examples in the U.S. and around the world that prices can work to significantly increase highway speed and reliability, more efficiently spread traffic across all periods of the day, and encourage shifts to public transportation and the combining of trips. Additionally, contrary to popular assumption, not all rush hour drivers are on their way to work. In fact, the National Household Travel Survey shows that on an average

workday, 56% of trips during the morning peak travel period and 69% of trips during the evening peak travel period are non-work related, and that 23% of peak travelers are retired. Many of these travelers have flexibility in their travel time or mode choices – flexibility that pricing encourages them to employ.

Second, it will generate revenues for re-investment precisely in the locations that need investment the most. Recent estimates in a forthcoming paper, “Toward a Comprehensive Assessment of Road Pricing Accounting for Land Use,” by economists Clifford Winston and Ashley Langer at the Brookings Institution, conclude that utilizing congestion pricing in only the largest 98 metropolitan areas would generate approximately \$120 billion a year in revenues while simultaneously solving the recurring congestion problem in those areas. Implementation of a broader road pricing strategy tied to wear and tear and reconstruction costs would obviously produce even higher revenue. As a point of comparison, in 2006 the U.S. spent a combined approximately \$150 billion on all of our highways. Toll revenues raised through congestion pricing could offer State and local officials additional flexibility to either postpone future tax increases or even reduce the wide array of taxes currently going into transportation (many of which have nothing to do with use of the transportation system).

Third, direct pricing can reduce carbon emissions and the emissions of traditional pollutants. According to Environmental Defense, a nonprofit environmental organization, congestion pricing in the city of London reduced emissions of particulate matter and nitrogen oxides by 12% and fossil fuel consumption and carbon dioxide (“CO₂”) emissions by 20%; a comprehensive electronic road pricing system in Singapore has prevented the emission of an estimated 175,000 lb of CO₂; and Stockholm’s congestion pricing system has led to a 10-14% drop in CO₂ emissions.

Fourth, as toll roads typically have dedicated revenue streams, they are far less likely to suffer from the safety problems presented by deferred maintenance that is so common on non-toll roads. For example, a February 2008 study by the International Bridge, Tunnel and Turnpike Association found that toll road facilities had lower fatality rates than both urban and rural untolled interstate highways (.52 fatalities per 100 million vehicle miles traveled on toll roads, vs. .55 on non-tolled urban interstates and 1.21 on non-tolled rural interstates).

In addition to expanding opportunities for road pricing, in the interest of better managing highways and controlling the need for investment, the Administration urges policy makers to reassess the current system of taxes that are intended to reflect use of the system. Currently, on many highways, wear and tear is caused disproportionately by heavily loaded trucks. Their share of road maintenance costs is not accurately captured by the existing set of taxes (e.g. heavy truck use tax, tire tax, etc.). A pricing structure that more appropriately reflects the true costs imposed by various vehicles would help align costs and benefits, reduce demand for additional investment and improve incentives.

4. *Institute Benefit Cost Analysis and Focus on Informed Decision-Making on a System and Program Level*

Benefit-cost analysis (“BCA”) of transportation projects allows decision makers to identify those projects that will generate the highest return to each dollar invested in our transportation systems. It also helps agencies to organize and document their decision processes and to identify risk and the most cost-effective means to mitigate it. Benefits typically measured and monetized in BCA include reductions in travel time and vehicle operating costs as well as improved safety, reliability, convenience, and passenger comfort. Costs typically included in BCA are agency costs of designing, building, operating, and maintaining a project, and may include user costs associated with disruptions caused by project construction and maintenance activities. BCA is versatile enough to incorporate even hard-to-quantify environmental benefits and costs. BCA results can be used to inform assessments of how projects will affect employment, business sales, land values, tourism and other indirect economic impacts.

Most States and local agencies have access to models and techniques needed to conduct BCA, although additional training and experience will be required to bring many of these agencies to a point where BCA can be readily applied. Currently, approximately 20 States make some use of BCA in managing their transportation programs; but six States use the technique regularly. This means that the vast majority of transportation decisions in the U.S. today are being made with only minimal reference to the projected lifecycle benefits and costs of a specific course of action relative to another course of action. The GAO recently conducted two studies to identify the key processes for surface transportation infrastructure planning and decision-making, with a particular emphasis on the role of economic analysis methods and the factors that affect the use of such methods. Among other reasons, GAO cited “political concerns” for why BCA is not more widely used in U.S. public sector surface transportation decision-making. GAO observed that projects may be important for a particular interest group or constituency even though it is not efficient from an economic standpoint.

GAO also noted that BCA results are rarely reviewed in light of actual project outcomes. In other words, not only is BCA underused in the project planning process, it is also rarely used to assess the efficacy of previous investments. This is in stark contrast to typical capital investment models employed in the private sector.

Instilling analytical rigor into the project selection process has been a long-standing Federal objective, even if it has not always been observed. This became an official goal of the US government in 1994, when President Clinton signed Executive Order 12893, *Principles for Federal Infrastructure Investments*, which stated,

Infrastructure investments shall be based on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures. To promote the efficient use of Federal infrastructure funds....Agencies should encourage the State and local recipients of Federal grants to implement planning and information management systems that support the principles set forth in section 2(a) through (c) of this order.

It is important that we establish far more productive means to ensure that scarce resources are flowing to projects that benefit the public the most. While BCA is likely to be one of our most

effective tools to advance that objective, we need to ensure that throughout our Federal surface transportation funding program investment decisions are driven by demand, not politics, and that investment decisions are made in open, transparent and data-driven contexts, not in the murky environment of special purpose spending and programmatic modal silos. The use of BCA in making surface transportation decisions should include intermodal freight options when practicable. Finally, to maximize the efficiency of our transportation investments, we must increase our consideration of the longer term (i.e., the full project life-cycle) and structure our investment strategy around the principles of asset management.

5. Supporting Modal Shift of Long-Distance Freight

There is no single answer to the challenge of providing our Nation with the best possible surface transportation system. It will take a careful blending of the best decisions and programs to offer a total transportation system that delivers the best passenger and freight solutions.

Moving long-distance freight by rail, including intermodal shipments of containers and trailers, offers safety benefits and fuel efficiencies that can be several times greater than truck. Other social and economic benefits include eliminating the disproportionate wear and tear caused by these vehicles, greatly reduced vehicle greenhouse gas emissions, and a reduction of highway congestion.

Unlike most other countries, the U.S. has a publicly owned road system and a privately owned rail system. While increasing freight capacity is an important issue for both highway and rail systems, past focus has mostly been directed to increasing highway freight capacity while failing to consider alternatives that can be more fuel-efficient, environmentally friendly, and cost-effective. Each year, railroad companies have invested billions of dollars in private capital to add capacity to their networks. The infrastructure maintenance cost per gross ton mile (GTM) on rail is about 30 percent of the infrastructure maintenance cost per GTM on road¹. The comparable efficiencies between the freight modes are evident in the fact that railroads make a profit hauling 80,000-pound containers and trailers. If these same vehicles were moved on the highway they would impose significant public cost².

Intermodal freight traffic that is traveling by rail will not be on the highway in the metropolitan areas between origin and destination points. Removing this freight traffic from the highway will reduce congestion. However, as congestion has a serious negative effect on our highway system, congestion can also affect the rail network. In addition to normal infrastructure and equipment maintenance and renewal (about \$17 billion a year) railroads spent an average of about \$1.5 billion each year during the last three years ending in 2006, and \$1.9 billion in 2007, to increase capacity. A recent study³ indicated that the rail network can absorb additional traffic. Four percent of the network is at or over capacity, and nine percent is near capacity. However, anticipated traffic growth will require much greater investment for capacity in the future.

¹ *Evaluating the public investment mix in US freight transportation infrastructure*. Michael F. Gorman, June 21, 2007.

² Highway cost allocation study.

³ *National Rail Freight Infrastructure Capacity and Investment Study*, Cambridge Systematics, September 2007.

Proposals for New Programs

Federal Interest Highway (“FIH”) Program

Rationale for Proposal

In recent years, Federal investment has been insufficiently focused on highways and highway projects that clearly fall within the Federal (vs. primarily local and/or regional) interest. Funding decisions tend to be only loosely related to either system performance or to projects’ likely rate of return. Programmatic funding silos and Congressional earmarking limit States’ flexibility to focus on their own priorities. There is no mechanism to effectively fund multi-state corridor projects, bottleneck projects, and (un-earmarked) projects of national or regional significance.

The FIH Program would respond to these challenges by reinforcing the Federal commitment to support interstate trade and travel as embodied by the Interstate Highway System, which encompasses slightly more than 1% of the nation’s highway miles, but carries approximately one quarter of U.S. highway traffic and three quarters of long-haul truck traffic⁴. The FIH Program would also institutionalize performance management and asset management in State-level transportation decision-making and provide funding for critical corridor, bottleneck, and nationally-significant projects.

Description of Proposal

Formula funding. USDOT would grant 80% of FIH funding annually to States under a formula based on the factors listed below. To receive FIH funding, a project would need to (a) be Title 23-eligible, (b) be located on the Interstate System or on other critical facilities of national significance⁵, and (c) meet the FIH Program’s performance and benefit-cost requirements. The program would also include a mechanism through which States could petition to expand eligibility on a case-by-case basis for non-Interstate segments that carry a sufficiently-high volume of non-commuter interstate traffic. States that exceeded their performance standards would be permitted flexibility to use FIH funding for non-FIH highway projects. FIH funding could be used to fund analyses conducted in order to meet the newly-required benefit-cost, performance management, and public private partnership requirements (all defined below) or to fund research activities consistent with the objectives of the FIH Program. Funding recipients would not be required to use a designated percentage of FIH funding for any of these purposes.

Formula allocation factor	Proxy for...
Interstate lane- miles	Extent of system
Vehicle miles traveled on the Interstate System	Use of system
Diesel fuel usage in the State	Freight traffic on system
State's contribution into Highway Trust Fund	Donor/donee issues

⁴ Interstate miles and Interstate Vehicle Miles Traveled figures are taken from FHWA’s 2006 Highway Statistics. Long-haul freight truck figures are taken from FHWA’s Freight Analysis Framework (version 2.2), with “long-haul” trips defined as those more than 50 miles in duration.

⁵ Defined to include new construction as part of USDOT-designated Corridors of the Future, other critical corridors for the movement of freight, port facilities and other major intermodal facilities, border facilities, and portions of the National Highway System that carry volumes of traffic comparable to the Interstate System and provide connectivity between Interstates and/or major metropolitan areas.

Discretionary funding. USDOT would award 20% of FIH funding through annual discretionary grants to projects based on a competitive process. To be eligible to receive this funding, transportation projects would need to (a) be Title 23-eligible; (b) be located on the Interstate system or at a border crossing; (c) make a significant contribution to a State’s FIH Program performance targets; and (d) have benefits that exceed costs by a substantial amount (e.g., a benefit-cost ratio greater than 2.0). Additionally, the recipient would need to demonstrate its application of balanced asset management principles in its programs and network(s).

In addition to the eligibility requirements, USDOT would base its discretionary funding decisions on a consideration of the following criteria: (a) the extent to which the project incorporated direct user fees; (b) the national benefits (economic, environmental, public health, etc.) generated by the project; (c) the extent of demonstrated coordination and collaboration between all relevant transportation entities within a given State and between States; (d) the degree to which the project leveraged non-Federal funding resources; (e) the project’s incorporation of an operational plan projected to reduce congestion; (f) the degree to which the project facilitated interstate commerce; (g) the degree to which the State has established ambitious FIH performance targets; (h) the degree to which the State has achieved its FIH performance targets; and (i) the degree to which the project would contribute to meeting the State’s FIH performance targets.

Federal share and grant recipient. The Federal share of project cost for FIH formula projects located within areas eligible to receive Metropolitan Mobility (see pages 21-24) funding would be 50%. FIH formula projects located *outside* of MM areas could receive a Federal share of up to 80%. Eligible grant recipients would include State⁶ DOTs or any other agency of statewide jurisdiction designated by the Governor. The maximum Federal share for discretionary grant projects would be 50%.

Performance management. USDOT would specify a number of performance areas (e.g., condition of pavement and bridges, delay hours, travel time reliability, ability to accommodate large trucks, number of transportation fatalities, injuries, and crashes, reductions in vehicle emissions, noise, and other environmental impacts) for Interstate routes in each State. USDOT would also specify quantifiable measures (e.g., travel time index, highway fatalities, emissions of particulate matter) that States would use to track progress. States would designate target levels for each performance measure, and would have significant flexibility to determine how to meet these targets. USDOT would expect the targets to be set at levels that are ambitious but attainable through the effective use of State resources, reflecting careful consideration of the costs and benefits of meeting such targets. The presence of well-documented, ambitious targets would weigh favorably in USDOT evaluations of discretionary funding requests. States would be required to document, publish annually, and justify their progress toward meeting their targets, and States that successfully met targets would be granted some degree of priority consideration when applying for FIH discretionary funding (as described above under “discretionary funding”). USDOT would publish, on an annual or bi-annual basis, a ranking of States’ performance in

⁶ For purposes of FIH eligibility, “States” would be defined to include all 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

relation to each performance measure. This ranking would not take into account State-specific performance targets.

Benefit-cost analysis. For a project to be eligible for a discretionary grant, the State would need to conduct a BCA to establish that the project has benefits that substantially exceed its costs. For a formula-funded project, the State would be required to conduct a BCA only if the project has a total capital cost of over \$25 million (lifecycle cost analysis would be sufficient if a project were simply a reconstruction or rehabilitation with no capacity expansion). In conducting a BCA, the State would evaluate all reasonable alternatives (including multi-modal alternatives, as appropriate). Based on the results of this analysis, for a formula-funded project, the State would then be required to either (a) select the alternative that was the most cost-beneficial means of reaching the project's objectives, or (b) justify its rationale for selecting a different alternative. USDOT would issue guidance on appropriate BCA methodology, economic values, and suggested methods of quantifying safety and environmental benefits and costs. For projects below the \$25 million threshold, the State would need to show USDOT that it had used Asset Management methods and lifecycle management tools to establish the cost-effective contribution of a program of projects toward meeting the State's performance objectives.

Public-private partnerships ("P3s"). All Federal-aid projects with a total cost of over \$250 million would not receive Federal assistance unless the project sponsor first compared the present value of the project's lifecycle costs under the most cost-effective form of conventional public procurement with the present value of the project's lifecycle costs if procured using a P3 (assuming State law allows for P3 procurement). The analysis could also take into account other public policy considerations which may not be quantifiable but may be significant. Federal-aid would only be provided for those projects procured by the method that yielded the lowest present value of lifecycle costs. These analyses could be conducted separately from required BCA (see above) for large projects, or the P3 option could be incorporated directly into the BCA as an alternative to be evaluated.

Other Federal Mandates. States would be required to comply with Federal environmental, labor, and other requirements. However, in order to eliminate duplicative and potentially inconsistent requirements, to the extent that a State legally required FIH projects to comply with State-level environmental, labor, or other requirements that were "substantially similar" to Federal law or regulation, the State-level requirement would satisfy the Federal requirement. In cases where Federal funding made up less than 10% of total project cost, such funds would not be deemed "Federal" for purpose of Title 23 requirements, although certain environmental requirements might apply. Additionally, to expand State flexibility to structure projects, for non-NEPA purposes States would be allowed to segment projects as they best saw fit. None of these provisions would supersede Davis-Bacon prevailing wage laws, consistent with Administration policy to neither expand nor contract Davis-Bacon protections.

FIH funding recipients would be required to have an emergency evacuation plan that was consistent with national defense and security polices and included cooperation among all agencies in the geographic area, including cities, counties, and public and private toll authorities, as needed. The program would include a phase-in period for this requirement.

Metro Mobility (“MM”) Program

Rationale for Proposal

Existing Federal transportation programs have shown themselves ill-suited to respond to the growing crisis of metropolitan transportation congestion, which imposes substantial and increasing costs on our nation’s cities. Modal funding silos and Congressional earmarking limit the flexibility of urban areas to focus on their own priorities. Funding decisions tend to be only loosely related to either system performance or to projects’ likely rate of return. Finally, many metropolitan areas have been slow to adopt innovative transportation policies, technologies, and financial arrangements.

The MM Program would address these challenges by providing substantial amounts of performance-based transportation funding directly to metropolitan areas with populations greater than 500,000 (which collectively generate 42% of the nation’s annual vehicle-miles traveled). This program would also allow recipients broad multi-modal flexibility in selecting projects for the movement of people and goods that institutionalize performance management in metropolitan-level transportation decision-making, and provide financial support for innovative metropolitan approaches to traffic congestion.

Description of Proposal

Formula funding. USDOT would award 70% of MM funding annually under a formula based on the factors listed below (see table). To be eligible to receive this funding, transportation projects would need to (a) be Title 23 or Title 49⁷-eligible, (b) be located within a metropolitan region with a population greater than 500,000⁸, (c) be intended primarily to provide mobility and associated safety benefits or to mitigate the environmental impacts of transportation activities⁹, (d) meet the MM Program’s performance and benefit-cost requirements, and (e) be selected through a competitive process open to both public and private sector transportation providers (meaning that public, private, or public-private entities would compete for funding to provide transportation solutions). The Secretary of Transportation would have the option of waiving condition (a) (Title 23 or Title 49 eligibility) on a case-by-case basis for projects that met conditions (b), (c), (d), and (e). MM funding could not be used to fund transit operations, but could be used to fund the operations of the Metropolitan Transportation Board, any analyses conducted in order to meet the newly-required benefit-cost, performance management, and public private partnership requirements (all defined below), or research activities consistent with

⁷ These titles include broad flexibility for intermodal projects. For example, development of highway-to-rail freight transfer stations facilitates a partnership between rail and motor carriers, which can provide public benefits such as alleviating highway congestion at bottlenecks, lowering overall greenhouse gas footprints of shipping, and lowered highway damage due to truck traffic.

⁸ For the purposes of the MM program, metropolitan regions would be defined based on the Urbanized Area definitions used by current Federal-aid funding programs. MM eligibility would extend not just to cities located in the 50 States and the District of Columbia, but also to Puerto Rico, American Samoa, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

⁹ This clause references the fact that the MM program would prohibit Federal funding for “transportation enhancement” activities eligible under previous Federal programs that are not primarily oriented toward mobility safety, or environmental mitigation (e.g., the construction of transportation museums).

the objectives of the MM Program. Funding recipients would not be required to use a designated percentage of MM funding for any of these purposes.

Category	Formula allocation factor	Proxy for...
Highway	Lane-miles of highways within an Urbanized Area (“UZA”) with a population over 500,000, excluding highways functionally classified as local roads	Extent of system
	Vehicle miles traveled on highways within a UZA with a population over 500,000, excluding highways functionally classified as local roads	Use of system
Transit	Fixed guideway route miles within UZA	Extent of system (rail)
	Guideway vehicle revenue miles within UZA	System capacity (rail)
	Bus vehicle revenue miles within UZA	System capacity (non-rail)
	Urban passenger transit miles within UZA	Use of system
Cross-cutting	UZA population ¹⁰	Population
	Hours of delay in UZA due to congestion, 2005	Amount of congestion

Federal share and grant recipient. The Federal share of project cost would be 50%¹¹. To facilitate multi-modal coordination and regional decision-making, MM funding would be awarded to a single Metropolitan Transportation Board (“MTB”), which would be designated not by Federal authorizing legislation, but rather by regional consensus, with the concurrence of the Governor (or multiple Governors, in cases where the metro area boundaries cross State lines). Development of these MTBs would involve a planning and public outreach process. The Federal transportation bill would place requirements upon this designation process and define the required technical and administrative capacity of an MTB. So long as this capacity was established, the MTB could be structured as an entirely public authority or as a mixed public-private authority. As desired, MTBs would have broad discretion to designate other entities as eligible sub-recipients to receive grant funding and administer projects. Although the concept of a MTB has similarities to existing Metropolitan Planning Organizations (“MPOs”), it is envisioned that MTBs would be newly constituted organizations, given the significant scope of their responsibilities. The authorizing legislation would include a period during which technical capacity of the MTBs would be developed and resources would be included to facilitate this process. In addition, USDOT would provide technical assistance and support to enhance the MTBs’ capacity to manage the MM Program.

¹⁰ For purposes of determining population figures within this formula, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

¹¹ As described in the Federal Interest Highway (“FIH”) Program section (page 18-20), FIH-funded projects located *within* MM-eligible areas could receive the same maximum Federal cost share as MM-funded projects: 50%. FIH-funded projects *outside* of MM-eligible areas could receive a maximum Federal share of 80%. The difference between the MM-area Federal share (50%) and the non-MM-area FIH Federal share (80%) reflects the fact that one of the MM program’s primary purposes is to leverage additional financial resources in metropolitan areas where travel demand is high, capacity is constrained, and the transportation network is more likely to be able to generate revenues that over time move the area toward financial self-sufficiency. This purpose is best achieved through a lower maximum Federal share.

Discretionary funding. USDOT would award 30% of MM funding to MTBs through annual discretionary grants to projects (or collections of projects) based on a competitive process¹². To be eligible to receive this funding, transportation projects would need to (a) be Title 23 or Title 49-eligible; (b) be located within a metropolitan region with a population greater than 500,000; (c) be intended primarily to provide mobility or safety benefits or to mitigate the environmental impacts of other transportation activities in an air quality non-attainment area; (d) make a significant contribution to an MTB's MM Program performance targets; and (e) have benefits that exceed costs by a substantial amount (e.g., a benefit-cost ratio greater than 2.0).

Additionally, the recipient would need to demonstrate its application of balanced asset management principles in its programs and network(s). Within this application, bringing assets to a state of good repair would be a priority. Both new capacity and recapitalization projects would be eligible to receive discretionary funding.

In addition to the eligibility requirements, USDOT would base its funding decisions on a consideration of the following criteria: (a) the degree – if any – to which the project utilizes efficient pricing of congested facilities; (b) for transit projects, the project's farebox recovery ratio; (c) the project's potential to reduce traffic congestion either on the facility or elsewhere on the network; (d) the extent of demonstrated coordination and collaboration between all relevant transportation entities within a given State and between States; (e) the project's potential to enable cost beneficial improvements in area transit service; (f) the degree to which the project leverages non-Federal funding resources; (g) the project's use of innovative technology; (h) the project's potential to serve as a regional or national demonstration of innovative or alternative financing mechanisms (e.g., public private partnerships, State Infrastructure Banks); (i) the technical feasibility and political probability of the project's near-term implementation; (j) the degree to which the MTB has established ambitious MM performance targets; (k) the degree to which the MTB has achieved its MM performance targets; and (l) the degree to which the project would contribute to meeting the MTB's MM performance targets.

Performance management. USDOT would specify a number of performance areas (e.g., condition of pavement and bridges, condition of transit vehicles, guideways, and stations, delay hours on highways, arterials, and transit systems, travel time reliability, ability to accommodate large trucks, number of transportation fatalities, injuries, and crashes, access to transit by selected population groups, and reductions in vehicle emissions, noise, and other environmental impacts) for each MM-eligible area, as well as measures (e.g., travel time index, highway fatalities, emissions of particulate matter) that MTBs would use to track progress. MTBs would designate target levels for each performance measure, and would have significant flexibility to determine how to meet these targets. USDOT would expect the targets to be set at levels that are ambitious but attainable through the effective use of State resources, reflecting careful consideration of the costs and benefits of meeting such targets. The presence of well-documented, ambitious targets would weigh favorably in USDOT evaluations of discretionary funding request. MTBs would be required to document, publish annually, and justify their progress toward meeting targets, and MTBs that successfully met targets would be granted some degree of priority consideration when applying for MM discretionary funding (as described

¹² For those New Starts projects either as existing or pending FFGAs or beyond the final design phase of project development as of the beginning of the reauthorization period, USDOT would continue to provide sufficient funding to cover the funding commitments. After enactment of this proposal, all major transit capital investment projects should apply through the MM discretionary.

above under “discretionary funding”). USDOT would publish, on an annual or bi-annual basis, a ranking of MTBs’ performance in relation to each performance measure. This ranking would not take into account MTB-specific performance targets.

Benefit-cost analysis. For a project to be eligible for a discretionary grant, the MTB would need to conduct a BCA to establish that the project has benefits that substantially exceed its costs. For a formula-funded project, the MTB would be required to conduct a BCA only if the project has a total capital cost of over \$25 million (lifecycle cost analysis would be sufficient if a project were simply a reconstruction or rehabilitation with no capacity expansion). In conducting a BCA, the MTB would evaluate all reasonable alternatives (including multi-modal alternatives, as appropriate). Based on the results of this analysis, for formula-funded projects, the MTB would then be required to either (a) select the alternative that was the most cost-beneficial means of reaching the project’s objectives, or (b) justify its rationale for selecting a different alternative. USDOT would issue guidance on appropriate BCA methodology, economic values, and suggested methods of quantifying safety and environmental benefits and costs. For formula-funded projects below the \$25 million threshold, the MTB would need to demonstrate to FHWA divisional or FTA regional staff that it had used Asset Management methods and lifecycle management tools to establish the cost-effective contribution of a program of projects toward meeting the MTB’s performance objectives.

Public-private partnership (“P3”) analysis. All Federal-aid projects with a total cost of over \$250 million would not receive Federal assistance unless the project sponsor first compared the present value of the project’s lifecycle costs under the most cost-effective form of conventional public procurement with the present value of the project’s lifecycle costs if procured using a P3 (assuming State law allows for P3 procurement). The analysis could also take into account other public policy considerations which may not be quantifiable but may be significant. Federal-aid would only be provided for these projects procured by the method that yielded the lowest present value of lifecycle costs. These analyses could be conducted separately from required BCA (see above) for large projects, or, more effectively, the P3 option could be incorporated directly into the BCA as an alternative to be evaluated.

Other Federal Mandates. MTBs would be required to comply with Federal environmental, labor, and other requirements. However, in order to eliminate duplicative and potentially inconsistent requirements, to the extent that a State legally required MM projects to comply with State-level environmental, labor, or other requirements that were “substantially similar” to Federal law or regulation, the State-level requirement would supersede the Federal requirement. In cases where Federal funding made up less than 10% of total project cost, such funds would not be deemed “Federal” for purpose of Title 23 or Title 49 requirements, although certain environmental requirements might apply. Additionally, to expand State flexibility to structure projects, for non-NEPA purposes States would be allowed to segment projects as they best saw fit. None of these provisions would supersede Davis-Bacon prevailing wage laws, consistent with Administration policy to neither expand nor contract Davis-Bacon protections.

MM funding recipients would be required to have an emergency evacuation plan that was consistent with national defense and security polices and included cooperation among all agencies in the geographic area, including cities, counties, and public and private toll authorities, as needed. The program would include a phase-in period for this requirement.

Mobility Enhancement (“ME”) Program

Rationale for Proposal

The current Federal transportation program includes a wide variety of programs designed to enhance targeted elements of mobility. The new programmatic structure laid out in this reauthorization proposal includes provisions to support mobility along the Interstate Highway System and other nationally significant routes and in major metropolitan areas. This re-focusing is a critical element of needed Federal transportation program reforms. By focusing the Federal government’s limited resources on projects that are predominantly in the national (vs. State, regional, or local) interest, it frees State and local governments to direct their own funds to projects that principally meet State and local mobility priorities – and to do so without being burdened by the restrictions and administrative burdens that accompany Federal funding. However, there remains value in providing States with some Federal transportation funding to help them meet their broader mobility needs. The ME Program is designed to serve this purpose.

Description of Proposal

Formula funding. USDOT would distribute ME funding annually based on a formula. Twenty-five percent of ME funding would be evenly distributed among the States¹³, and the remaining 75% of ME funding would be distributed based on each State’s share of total population. Eligible uses of funding would include any Title 23 or Title 49 purpose, including research activities consistent with the objectives of the ME Program. USDOT would encourage States to use their ME funding to: maintain and improve the condition of bridges located off of the National Highway System; increase mobility in small communities and rural areas; and to focus on supporting individuals that are disadvantaged or have special needs (e.g., the low-income, the elderly, and individuals with disabilities).

Federal share and grant recipient. The Federal share of project cost would be 90%. Eligible grant recipients would include State DOTs or any other entity designated by the Governor.

Existing Federal Mandates. ME program funding would be provided to the States on a “revenue sharing” basis and all Title 23 and Title 49 requirements beyond mere project eligibility would be eliminated. Furthermore, in order to eliminate duplicative and potentially inconsistent Title 23 and Title 49 requirements, to the extent that a State legally required ME projects to comply with environmental, labor, or other requirements that were “substantially similar” to Federal law or regulation (NEPA, the Americans with Disabilities Act, , etc.), the State-level requirement would supersede the Federal requirement. In cases where Federal funding made up less than 10% of total project cost, such funds would not be deemed “Federal” for purpose of Title 23 or Title 49 requirements, although certain environmental requirements might apply. Additionally, to expand State flexibility to structure projects, for non-NEPA purposes States would be allowed to segment projects as they best saw fit. None of these provisions would supersede Davis-Bacon prevailing wage laws, consistent with Administration policy to neither expand nor contract Davis-Bacon protections.

¹³ For purposes of ME eligibility, “States” would be defined to include all 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

Proposals to Reform Existing Programs

Consolidated Federal Lands Highway and Transit (“FLH&T”) Program

Rationale for Proposal

FHWA’s Federal Lands Highway (“FLH”) Program was created 25 years ago to assure a consistent and stable program structure for transportation systems that access Federal and tribal lands. FHWA provides oversight and technical expertise to Federal land management agencies responsible for managing approximately one-third of all land in the U.S., as well as Federal defense and security agencies, as they build and maintain transportation systems. FTA also supports public transportation alternatives in national parks and public lands through its Transit in the Parks Program.

For tribal governments, FHWA works directly with tribes on a government-to-government relationship level, as well as with the Bureau of Indian Affairs, to assure Federal trust responsibilities are met and technical assistance is provided. Additionally, some tribes directly receive grants for public transportation services on Indian reservations through FTA’s Tribal Transit Program. The stewardship of Federal and tribal transportation programs is important, and USDOT’s expertise in overseeing and delivering transportation services allows these agencies to focus on their primary missions, while providing access to and mobility within our nation’s Federal and tribal lands.

Description of Proposal

The FLH&T Program would include the following major elements:

- The Indian Reservation Roads (“IRR”) Program and the associated IRR Bridge Program, while creating a new safety set-aside component within the IRR Program;
- The Park Roads and Parkways Program;
- The Refuge Roads Program;
- The Public Lands Highway Program, including both the Forest Highway Program and the Public Lands Highway Discretionary Program;
- The Transit in the Parks program¹⁴; and
- The Tribal Transit Program.

Assuming sufficient resources are available, funding eligibility under the Public Lands Highway Program would be expanded to include facilities under the jurisdiction of other Federal partners, including the Bureau of Land Management, the U.S. Army Corps of Engineers, the Department of Defense, and the U.S. Forest Service. FLH&T funding could not be used to provide subsidies for highway and transit operations. USDOT would base its discretionary funding decisions on a consideration of the following criteria: (a) the extent to which the project served the transportation needs of Federal and/or Tribal lands (mobility, access, etc.) with an emphasis on

¹⁴ Formerly known as the Alternative Transit in Parks and Public Lands (“ATPPL”), and renamed within the SAFETEA-LU Technical Corrections Act of 2008.

projected travel, ridership and safety and (b) the extent of demonstrated coordination and collaboration between all relevant transportation entities.

USDOT would also work with the FLH&T Program's core partners¹⁵ to carry out two pilot programs: (1) a program allowing up to five demonstrations of P3s in the design, construction, operations and/or maintenance of Federal Lands highways, and (2) a program allowing up to five demonstrations of innovative pricing on Federal Lands highways. These pilot programs are described in greater detail on pages 42 and 48 of this proposal.

¹⁵ Currently, FHWA's Federal Lands Highway Program provides program stewardship and transportation engineering services for the planning, design, construction, and rehabilitation of the highways and bridges that provide access to and through Federally-owned lands. Federal Land management agencies typically have responsibility over the operations and maintenance of Federal lands roads, and often own those roads as well.

Highway Safety Improvement Program (“HSIP”)

Rationale for Proposal

The Highway Safety Improvement Program (“HSIP”), established by Section 1401 of SAFETEA-LU, was designed to significantly reduce traffic fatalities and serious injuries by allowing States the flexibility to target funds to meet their most critical safety needs. The program also seeks to coordinate safety programs, encourage data-driven decisions, and leverage limited resources to achieve the greatest possible reduction in highway fatalities. States have demonstrated their commitment to complying with requirements of the HSIP, developing Strategic Highway Safety Plans (“SHSPs”) that identify strategies to achieve critical outcomes. However, in the course of reviewing States’ safety plans and detailed accident data, FHWA has identified a number of improvements that could be made to the program, which would reduce paperwork burdens, better align set-asides to target safety problems, and provide greater flexibility for States.

Description of Proposal

The HSIP would be reauthorized, but with the following modifications:

- Provision of dedicated obligation authority to accompany formula funds, which would allow States greater certainty in planning;
- Greater attention and support for high-quality safety information collection and analysis systems;
- Improvements to the SHSP process by assuring participation of Federal agencies, tribal and local governments;
- Improvements to the High Risk Rural Roads Program;
- Elimination of the Biennial Rail Report to Congress;
- Consistent with each State's SHSP, Section 130 activities will be eligible, without a specific set-aside;
- Reduction of the mandatory Railway-Highway set-aside and elimination of the Biennial Rail Report to Congress;
- Provision to allow States to flex 25% of HSIP funds (up from current 10%) to non-infrastructure, behavioral, enforcement and other safety purposes, after certifying that they have adequately met their planned safety infrastructure needs;
- Elimination of the requirement that States submit a separate report identifying their top 5% most hazardous locations; and
- A requirement that States post their SHSP and their HSIP report on their website to raise awareness of highway safety programs and implementation strategies.

Motor Carrier Safety Grant Program Flexibility

Rationale for Proposal

The Federal Motor Carrier Safety Administration (“FMCSA”) currently administers 10 separate State grant programs to improve commercial vehicle safety, each with slightly differing requirements and some that have overlapping purposes. This proposal would simplify the sometimes confusing array of Federal grant programs, provide States with increased flexibility and efficiency in the administration and implementation of commercial vehicle safety grants, and strengthen the role of the State safety agencies in reducing truck- and bus-related crashes and saving lives.

Description of Proposal

The Department would seek authority to create a single commercial motor vehicle (“CMV”) State grant program with one set of matching fund requirements. The CMV safety grants funding and requirements would be rolled into the Motor Carrier Safety Assistance Program (“MCSAP”) structure. The new authority for a harmonized program would include:

- Greater flexibility for FMCSA to work with States by allowing CMV safety funding to be directed toward special projects such as the Performance Registration Information Systems Management (“PRISM”) program, Commercial Driver’s License Information System (“CDLIS”) improvements to monitor drivers’ safety performance, safety data improvement, and other safety initiatives where needed;
- A uniform administrative takedown amount for all grant programs;
- Authorization for grant funds to be used by the FMCSA for contracts and cooperative agreements in support of National program activities; and
- New Maintenance of Effort requirements so that States are not penalized when contributing additional State resources toward commercial vehicle safety programs.

NHTSA Combined Grant (“CG”) Program

Rationale for Proposal

To improve efficiency in managing its grant programs, provide additional flexibility to States in allocating funds to safety needs, and reduce administrative burden on States, NHTSA would consolidate its separate grant programs for impaired driving, occupant protection (seat belts and child safety seats), high visibility enforcement (“HVE”), data, and motorcycle safety into a single combined grant (“CG”) program.

Description of Proposal

Consolidated grant application. Instead of applying to multiple discretionary grant programs separately, States would submit to NHTSA a single annual application (the “CG application”), which would include sections addressing each of the categories referenced below under “categorical funding.” The CG application would be submitted in conjunction with a State’s Strategic Highway Safety Plan (“SHSP”), which would further certify that category-specific eligibility requirements were met and related performance measures, where applicable, were achieved.

Allocation of funding. NHTSA would fund the Combined Grant (“CG”) Program with funding previously designated for each of the grant programs that the CG Program would supersede (impaired driving countermeasure grants, safety belt incentive grants, etc.). Forty percent of CG funding (“CG formula funding”) would be allocated to States based on the section 402(b) Highway Safety Funding formula designated in SAFETEA-LU, and could be used by States for any of the nine national priority areas:

1. Alcohol and drug-impaired driving countermeasures;
2. Occupant protection;
3. Police traffic services (e.g., enforcement);
4. Emergency medical services;
5. Traffic records;
6. Motorcycle safety;
7. Pedestrian and bicycle safety (jointly administered by FHWA and NHTSA);
8. Non-construction aspects of roadway safety (administered by FHWA); and
9. Speed control (jointly administered by NHTSA and FHWA).

The remaining 60% of CG funding (“CG categorical funding”) would be divided among the categories identified below, and would be allocated to States based upon category-specific funding formulae and eligibility requirements. Each category of categorical funding would be allocated only to those States that certified and demonstrated (through their CG application and SHSP) that they met the category’s eligibility criteria.

Eligibility for receipt and use of categorical funding. In order to be eligible to receive funding from a given category (e.g., impaired driving), the State would have to certify in its CG application that it had implemented certain countermeasure activities or programs (HVE, primary belt laws, etc.) that have been shown to be effective in reducing the number and/or severity of

crashes. States will also be asked to identify any cost effective technology they are using (or plan to use) to achieve safety objectives. Further specifics on countermeasure activities and programs would be included in individual State SHSPs which would be submitted in conjunction with the CG application. Category-specific eligibility criteria are described below.

In addition, if a State demonstrated achievement of category-specific performance measures it could use the remainder of the funding allocation under this category to fund any of the nine national priorities listed under “allocation of funding.” Category-specific performance metrics would be defined through Departmental guidance related to its Safety Strategic Objective or rulemaking, and would correlate closely with NHTSA-specific outcome measures included in its annual performance plan.

Impaired driving. Twenty-five percent of CG funding would be distributed as “impaired driving” categorical funding.

- *Eligibility to receive funding.* To be eligible to receive impaired driving categorical funding, a State would need to demonstrate a defined level of participation in the nationwide *Drunk Driving. Over the Limit. Under Arrest.* campaign, and would need to satisfy one of the following three criteria: (a) achievement of an impaired driving fatality rate less than .45 per 100 million vehicle miles traveled; (b) identification as one of the States with the five highest impaired driving fatality rates or impaired driving fatality numbers; or (c) implementation of five of eight other USDOT-defined measures. These measures would include the following: (a) ignition interlock program improvement (defined achievements to include first offense); (b) new administrative license revocation (“ALR”) law or improvements to existing ALR program; (c) high blood alcohol concentration (“BAC”) laws or per se drug impaired driving laws; (d) BAC test refusal law (with penalty at least as strict as that for test failure); (e) High Visibility Enforcement (“HVE”), to include measures of statewide coverage); (f) task force or leadership group meeting specific authority, leadership, and membership requirements (following the New Mexico model); (g) underage drinking program (including liquor law enforcement elements); and/or (h) graduated drivers licensing (with set number of components implemented).
- *Eligible uses of funding.* States could use impaired driving categorical funding for development and/or delivery of programs related to the above criteria, plus impaired driving training for law enforcement and criminal justice professionals, paid media, and costs of impaired operator information systems.

Occupant protection (Seat Belts and Child Safety Seats). Twenty-five percent of CG funding would be distributed as “occupant protection” categorical funding.

- *Eligibility to receive funding.* To be eligible to receive occupant protection categorical funding, a State would need to demonstrate a defined level of participation in the nationwide *Click It or Ticket* mobilization, as well as four of the following five criteria: (a) sustained high-visibility law enforcement to include nighttime enforcement as appropriate; (b) child passenger protection to include programs aimed at booster-age children; (c) countermeasures for high risk populations (e.g., rural drivers and teens), (d)

primary seat belt laws, and (e) seat belt use laws requiring front and rear seat use by all ages.

- *Eligible uses of funding.* States could use occupant protection categorical funding to support programs designed to address any of the criteria listed above, or to train fire fighters, law enforcement officers, emergency medical services professionals and others to provide community child passenger safety services. No more than 5% of funds could be used for the purchase of child safety restraints for low-income families.

Data programs. Five percent of CG funding would be distributed as “data” categorical funding.

- *Eligibility to receive funding.* To be eligible to receive data categorical funding, a State would need to (a) operate a functioning traffic records coordinating committee (“TRCC”) that met at least three times per year; (b) designate a TRCC coordinator (at least part-time); (c) establish a traffic record strategic plan (approved by the State TRCC) that described specific quantifiable and measurable improvements anticipated in the State’s core safety databases (crash, citation/adjudication, driver, EMS/ISS, roadway and vehicle databases); and (d) demonstrate quantitative progress in relation to the accuracy, completeness, timeliness, uniformity, accessibility, and/or integration of a core highway safety database. USDOT would develop, in cooperation with the States, a list of acceptable performance measures in relation to criterion (d), and would publish that list in the Federal Register.
- *Eligible uses of funding.* States could use data categorical funding to make further data program improvements of core highway safety databases related to quantifiable, measurable progress in any of the six significant attributes listed above.

Motorcycle safety. Five percent of CG funding would be distributed as “motorcycle safety” categorical funding.

- *Eligibility to receive funding.* To be eligible to receive motorcycle safety categorical funding, a State would need to satisfy three or more of the six existing 2010 motorcycle safety incentive grant program criteria. These criteria include: (a) offering effective motorcycle rider training courses; (b) developing an effective motorcyclists awareness program; (c) showing a reduction in fatalities and crashes involving motorcycles; (d) implementing an impaired driving program; (e) showing a reduction of fatalities and accidents involving impaired motorcyclists; and/or (f) showing that all fees collected from motorcyclists are used for motorcyclists safety training and motorcycle awareness.
- *Eligible uses of funding.* States could use motorcycle safety grant monies to fund any of the following activities, all of which are currently allowable under the existing 2010 grant program: (a) improvements to motorcyclist safety training curricula; (b) improvements in program delivery of motorcycle training to both urban and rural areas (including procurement or repair of practice motorcycles, instructional materials, mobile training units, and leasing or purchasing facilities for closed-course motorcycle skill training); (c) measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and (d) public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists. States could also use motorcycle

safety categorical funding to fund, in support of a comprehensive motorcycle safety program, any of the following additional safety countermeasures: (a) increased education and enforcement efforts to reduce impaired driving; (b) promoting and increasing the use of Federal Motor Vehicle Safety Standard (“FMVSS”) No. 218 compliant helmets; (c) reducing the number of improperly licensed motorcyclists; (d) implementing a graduated driver licensing system for new entrant motorcycle operators; (e) increasing education and enforcement efforts on speeding and reckless riding; and/or (f) implementing motorist awareness programs to decrease motor vehicle crashes with motorcycles.

Research Strategy and Areas of Focus

Rationale for Proposal

Ongoing demographic, economic, technological, political and institutional trends have major implications for our Nation's transportation system now and well into the future. Research and innovation are vital to achieving our national transportation goals and can help decision makers understand how the transportation system performs, how it can be improved, and what it would look like under different scenarios. In recent years, Congress has earmarked much of USDOT's research budget with no larger strategic focus. Funding that is consistent with a clearly defined research agenda is integral to ensuring the effectiveness and relevance of hundreds of millions of dollars of Federal research expenditures.

Overall Research Strategy

Under this proposal, USDOT would work with its partners and other research institutions to adopt an overall research strategy that incorporates and coordinates the activities of its various operating administrations. In creating this strategy, the Department would seek advice and feedback on national transportation research and innovation priorities from a broad range of stakeholders, including representatives from all transportation industry sectors, the university research community, state transportation officials, local transportation officials, and other transportation professionals. Ultimately, this strategy would serve as the cornerstone of a national transportation research and innovation agenda, and ensure that research activities and investments are focused on national transportation research priorities. It would also enable and expedite transportation innovation through a variety of methods, ranging from carrying out advanced research to providing funding to test and evaluate new approaches across modes, to assisting with the all-important transfer of technology and innovation through education and other means.

Working with the modes, RITA would conduct multi-modal research and post-project evaluation of research, and would coordinate a departmental research, planning, and investment decision making-process that builds on the Department's ongoing efforts in this arena. This decision-making process would serve as the means by which to execute a national transportation research and innovation agenda and ensure that research activities and investments were focused on national transportation research priorities. RITA would enable and expedite transportation innovation through a variety of methods, ranging from carrying out advanced research to providing funding to test and evaluate new approaches across modes.

Because of the challenges in each of the modes, individual operating administrations would carry out research activities specific to their respective modes of transportation in support of the national research and innovation agenda and national research priorities. They would also partner with other organizations to leverage research investments, provide training and education, and help disseminate research findings both within and beyond the transportation community.

USDOT Areas of Research Focus

The Department's research and innovation programs would be focused on national transportation research priorities that would be targeted at addressing critical transportation needs. As such, the national transportation research and innovation agenda would likely include, but would not be limited to, understanding and testing ways to measurably improve transportation safety, reduce congestion and improve reliability, achieve replacement of deteriorating infrastructure with longer lasting structures, and begin to understand and address the emerging issue of green house gases and climate control. With respect to safety, the Department would heavily emphasize the potential of various crash prevention technologies to significantly reduce highway fatalities. With respect to reducing congestion and improving reliability, the Department would heavily emphasize the wide range of benefits, costs and risks of various strategies and technologies designed to improve overall system performance. New materials and construction techniques would form the basis for meeting the infrastructure challenges. Climate issues would be examined under the three-part approach dealing with fuel type, vehicle energy efficiency, and level of travel.

This emphasis would be reflected in the specific modal research emphasis areas and addressed by the appropriate USDOT agencies; it will also be done in coordination with other national and international research and technology institutions and programs, such as the Strategic Highway Research Program (SHRP2). Mission-driven exploratory advanced research, applied research and development, innovation test and evaluation, and education and training will be conducted in emerging or renewed priority areas.

These program areas are highlighted below:

Enhance System Performance

Increasingly, the transportation community is recognizing that federal transportation investments must be more directly tied to improvements in system performance. Significant research, development and education is required to gather and report national information on the extent, condition, performance and use of the Nation's transportation system and to assist in the forecasting of future demand and in quantifying the impact of current and proposed transportation programs and policies. Tools and techniques such as BCA, asset management, and life cycle cost analysis must be future refined and propagated.

Reduce Congestion

The worsening congestion level is a key concern. This is supported by TRB's 2005 report on *Critical Issues in Transportation*, which highlights that the demand for passenger travel could double as the population increases by approximately 100 million by 2040. New innovations to solving congestion problems should provide considerable relief and significantly reduce the costs of congestion.

Improve Safety

Highway crashes, particularly those involving fatalities and serious injuries, are complex events often involving multiple contributing factors. Thus, improving safety requires analyzing and researching crashes from an integrated perspective (driver, vehicle, and infrastructure) and creating systematic measures to counter the deficiencies. The Intelligent Transportation Systems ("ITS") Program and similar programs will provide a test-bed for the assessing and integrating

the innovations. These efforts will complement research by others entities, such as vehicle and equipment manufacturers and the communications industries and provided efficiencies to Federal, State and local regulatory and/or enforcement entities.

Address Climate Change and Environmental Linkages to Quality of Life

Improving transportation and environmental linkages is essential to meeting the nation's mobility goals in the 21st Century. Increasingly delays in the implementation of transportation projects are attributed to issues associated with the transportation planning and environmental decision making process. There is a need for better research and data regarding the impacts of transportation on the environment, including climate change. Meeting these challenges will require research that results in new technologies and practices to better inform transportation and environmental decision-making processes, and streamlined transportation planning and environmental review processes that help protect and enhance the environment.

Maintain Infrastructure Integrity

Transportation research has provided substantial advances and innovations that have contributed to improvements such as longer lasting pavements, structurally sound bridges, and advanced traffic systems, as well as non-destructive evaluation of the infrastructure. Such research is crucial when considering the needs of the aging transportation infrastructure. The impacts on the transportation infrastructure from climate changes must also be assessed and considered in new construction design and methods.

Meet Freight, Logistics, and Global Challenges

The combination of globalization, changing logistical practices, population growth, and increased economic demand is causing freight movement by all modes to grow rapidly, as well as the need for greater inter-modalism. According to the TRB 2005 *Critical Issues in Transportation report*, truck travel and containerized shipments may double by 2025. The report entitled *Future Needs of the U.S. Surface Transportation System* (AASHTO 2007) further estimates U.S. container traffic increased from 8 million units in 1980 to 42 million units in 2005, and is expected to hit 110 million units by 2020. In addition to increases in volume, the average length of haul for trucks has increased 80 percent from 263 miles in 1970 to 473 in 2000 (BTS *National Transportation Statistics, 2007*, Table 1-35).

Assess Policy and System Financing Alternatives

The R&T Program must also reflect the "national leadership" required to inform, assist, and lead our stakeholders and partners to solutions that will better meet current and future transportation needs. As such, we need to explore emerging transportation policy alternatives on key emerging issues such as financing the future transportation system. We need to understand better the near-term and longer-term system financing alternatives, including P3s, innovative financing mechanisms, variable pricing, and system-wide VMT-based charges.

Under this research, technology, education and training proposal, USDOT would have the capacity to lead, carry out, and evaluate a robust national transportation research and innovation agenda with its partners and for transportation stakeholders. These initiatives would be mission and results driven and would be fully coordinated across all the agencies and with other organizations and institutions conducting research or delivering research results. The end product would be greatly improved transportation facilities and services to meet the Nation's needs for the 21st Century.

Earmark Flexibility

Rationale for Proposal

States and urbanized areas currently are holding substantial amounts of Federal highway and public transportation funding that has been earmarked by Congress for specific projects that are not, in fact being advanced. As of September 30, 2007, States had a total of approximately \$10 billion in earmarked highway funds that were legally available for obligation on projects designated in legislative documents, but that had not been obligated. Similarly, States and urbanized areas held approximately \$2.3 billion in earmarked public transportation funds. In many cases, the designated projects were not a high priority for the State or urbanized area and it was unwilling or unable to commit its own resources to provide any required match or to make up any difference between the amount designated and the actual cost of the designated project. As a result, the designated funds sat idle, thus providing no transportation benefit to the public at all.

To assist States and urbanized areas in making the most effective and efficient use of Federal surface transportation funds, the proposal would allow States and urbanized areas to use their highway and public transportation funds earmarked for specific projects instead for purposes eligible under the FIH, MM, HSIP, or ME Programs.

Description of Proposal

To assist States and urbanized areas in making the most effective and efficient use of Federal surface transportation funds, this proposal would allow States and urbanized areas to, at their option, use their idle earmarked funds (along with any associated obligation limitation) for purposes eligible under the FIH, MM, HSIP, or ME Programs. This flexibility would be available only for earmarked funds (or a portion of those funds) that had been available for obligation but had sat idle for 3 or more fiscal years. Going forward, States and urbanized areas would have the authority to convert three-year-old earmark balances on a rolling basis.

Proposals to Encourage Pricing and the Leveraging of Federal Funding

Enhanced Access to Private Activity Bonds (“PABs”)

Rationale for Proposal

SAFETEA-LU amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which tax-exempt private activity bonds (“PABs”) may be issued. SAFETEA-LU established a “national volume cap” that limits the total amount of such bonds to \$15 billion. Based on the pipeline of applications for allocation of PAB authority for newly-eligible facilities, the Department expects to allocate the entire \$15 billion sometime early in 2009. By limiting the number of highways public transportation and inland freight transfer projects (unlike the regime for airports and seaports) for which PABs are available, the national volume cap hinders the ability of PABs to level the playing field between private and public debt. The national volume cap is inconsistent with the Federal government’s policy to facilitate and encourage private sector investment in highway and freight transfer facilities.

Other problems with current law include:

1. Straight-line Depreciation. The private sector cannot use an accelerated depreciation schedule for capital projects financed with PABs, making PABs less attractive in some circumstances than other financing alternatives.
2. Limited Flexibility to Backload. Many toll roads do not generate sufficient revenues in the early stages of the project to cover the interest expense on borrowed funds and the Internal Revenue Code does not permit interest payments on PABs to be deferred to accommodate a lower revenue stream during a “ramp-up” period.
3. Acquisition of Existing Assets. The Internal Revenue Code generally limits PABs to new construction and not more than 25% of the proceeds can be used to acquire land, which limits the private sector’s ability to use PABs to finance investments in existing surface transportation facilities.

Description of Proposal

In order to provide the private sector with access to tax-exempt interest rates on a level-basis with the public sector, and to increase private sector investment in U.S. transportation infrastructure, the PAB program would be reauthorized without a national volume cap. Furthermore, in order to encourage private investment in U.S. transportation infrastructure, the reauthorization bill would amend the Internal Revenue Code with respect to qualified highway and freight transfer facilities to authorize (a) the use of an accelerated depreciation schedule for capital projects financed with PABs, (b) back-loaded structures on toll projects financed with PABs, and (c) the use of PABs to finance private investment in existing infrastructure.

P3 Analysis in FIH and MM Programs

Rationale for Proposal

Many states have adopted legislation authorizing P3s and many more states are considering P3s as a preferable delivery method for transportation projects. In transferring responsibility and risk for multiple project elements to the private partner, the project sponsor relaxes its control of the procurement, and the private partner receives the opportunity to earn a financial return commensurate with the risks it has assumed.

The public benefits of P3s include, among other things, reduced costs, acceleration of project delivery, more appropriate allocation of project risks, and higher quality projects. A recent report comparing the performance in Australia of 21 P3 projects and 33 traditional projects concluded that P3s demonstrate “clearly superior cost-efficiency” over traditional procurement methods¹⁶. The report indicated that for \$4 billion of traditional projects the net cost over-run was \$602 million, while for \$4.4 billion of P3 projects the net cost over-run was only \$52 million, which was not considered statistically different from zero. The report also indicated that while traditional procurements were completed 23.5% behind schedule, P3s were completed, on average, 3.4% ahead of schedule.

In addition, P3s offer States and municipalities the benefits of private sector due diligence, economic analysis and attention to underperforming facilities, and in some instances a P3 may allow long-term capital planning for the maintenance and improvement of a facility free of customary appropriation risk that frustrates investment in the Nation’s transportation network.

Despite the benefits of P3s, the majority of transportation projects in the U.S. are not delivered as P3s. Instead, they are delivered using traditional procurement approaches, which are generally more cumbersome, costly and time-consuming than P3s. While there may be circumstances that justify the use of a traditional approach, there is currently no requirement for States to consider the many benefits that could be provided by delivering a project as a P3 when utilizing Federal dollars.

Description of Proposal

This proposal, to be incorporated within the newly-created Federal Interest Highway and Metropolitan Mobility Programs, would require recipients of Federal-aid for a project that is expected to cost more than \$250 million to compare the Net Present Value (“NPV”) of the project under the most cost-effective form of conventional public procurement with the NPV of the project if procured using a P3. The analysis could also take into account other public policy considerations which may not be quantifiable but may be significant. Federal-aid would only be provided for those projects procured by the method that yields the highest NPV. Project funding could be used to pay for the comparative analysis, with the costs of the analysis reimbursed by a portion of the Federal-aid funding provided for the overall project.

¹⁶ *Performance of PPPs and Traditional Procurement in Australia: Final Report*, The Allen Consulting Group, November 30, 2007, pg. 1.

P3s on Federal Lands Highways

Rationale for Proposal

Public private partnerships have proven to be valuable tools for improving highways and highway networks and using existing resources more efficiently. The use of P3 arrangements can produce significant cost savings and better roadway performance for the agency responsible for the roadway. To date, most P3 projects have involved only State and locally-owned highways; P3s could offer many of the same benefits to Federal Lands highways and highway networks. The purpose of this provision is to create a pilot program for five demonstration projects to highlight the benefits that P3s may offer to Federal Lands highways.

Description of Proposal

USDOT would be directed to work with the Federal Lands Highway (“FLH”) Program’s core partners¹⁷, to identify up to five Federal Lands projects on which to use P3s for the design, construction, operations and/or maintenance of those highways and related infrastructure. To be considered for a P3, projects would need to be eligible for assistance under Chapter 53 of Title 49 or Chapter 2 of Title 23. At least two and no more than three of the projects would be required to serve urban areas with populations exceeding 500,000.

Federal law would be clarified to explicitly authorize the use of P3 arrangements by core FLH agencies to satisfy their obligations with respect to Federal lands roadways and related infrastructure. Core FLH partners also could authorize the use of present and future Federal Lands funding to pay for any P3 agreement.

¹⁷ Currently, FHWA’s Federal Lands Highway Program provides program stewardship and transportation engineering services for the planning, design, construction, and rehabilitation of the highways and bridges that provide access to and through Federally-owned lands. Federal Land management agencies typically have responsibility over the operations and maintenance of Federal lands roads, and often own those roads as well.

Enhanced Flexibility for State Infrastructure Banks (“SIBs”)

Rationale for Proposal

Under current law, States may capitalize State infrastructure banks (“SIBs”) through separate accounts with up to 10% of major formula highway and transit capital funds, and may use SIBs to provide loans or other forms of credit to public and private entities for eligible highway, transit and rail projects. States must also provide a non-Federal cash match equal to 25% of all Federal funds used to capitalize their SIBs¹⁸. Most States are failing to take advantage of this institutional finance mechanism, seeded with Federal funds, which would serve to recycle transportation funding at the State level. While 39 States participated in the initial pilot program in 1996, only 33 States still have SIBs, and out of these, only a dozen States are responsible for the bulk of SIB-related financial activity. No State has requested to capitalize its SIB with SAFETEA-LU funds. This failure reflects a lack of incentive at State and local levels to replace direct Federal-aid for local projects with loans, as well as State-level institutional resistance to recycling transportation investments through a credit assistance mechanism that is repaid by public and private entities over time.

Description of Proposal

States would be authorized to capitalize SIB highway accounts with up to 100% of their major formula or discretionary highway funds received under the FIH Program. States would be required to provide a non-Federal cash match equal to 20% (from 25%) of all FIH funds used to capitalize their SIBs although the Secretary would retain the right to waive such requirement in the event the State could demonstrate the SIB would be utilized to create additional State and local revenue streams directly from facility users. In addition, MTBs created pursuant to the MM Program would be allowed to create metropolitan mobility banks (“MMBs”) ¹⁹ to make loans or provide other forms of credit to public and private entities for eligible urban mobility projects. MTBs would be authorized to capitalize their MMB’s with up to 100% of the major formula and discretionary funds received under the MM Program. MTBs would be required to provide a non-Federal cash match equal to 50% of all MM funds used to capitalize their urban mobility accounts although the Secretary would retain the right to waive such requirement in the event the MTB could demonstrate the MMB would be utilized to create additional State and local revenue streams directly from facility users. FIH or MM funds used by States or MTBs to make loans or provide credit would initially be subject to Title 23 or Title 49 requirements. However, “recycled funds” – funds received by States or MTBs as repayment of loans or credit that were later re-issued to support a subsequent loan or credit offering – would not be subject to Title 23 or Title 49 requirements apart from Davis-Bacon prevailing wage provisions.

¹⁸ 23 U.S.C § 610(d), §610(e) and § 610(g)(1). States that elect to create a SIB capitalize separate highway and transit accounts with Federal-aid. Highway projects must be eligible for Federal-aid under Title 23, and transit projects must be eligible for Federal-aid under Title 49. Another example of Federally-assisted infrastructure banks is the EPA Clean Water State Revolving Fund program, which uses Federal grants to capitalize State loan funds. The loan funds have provided over \$4.5 billion annually in recent years to a range of public and private borrowers to fund water quality protection projects.

¹⁹ Urban mobility banks could consist of accounts, created in existing SIBs, that are established, capitalized and administered by MTBs, or could be separate “banks” created by one or more MTBs with individual accounts established, capitalized and administered by MTBs. The MTB would use existing city or county authority to operate the bank, or would seek enabling legislation at the state and/or local level, as required.

Pilot Program for States to Opt Out of the Federal-Aid Highway Program

Rationale for Proposal

Since the modern Federal-aid highway program was established in 1956, the extent and complexity of Federal requirements that States and transit providers must meet as a condition of receiving Federal highway funding have grown significantly. Moreover, Federal transportation expenditures increasingly bear no relationship to a clearly defined Federal interest. Many Federal surface transportation programs in Titles 23 and 49 are highly prescriptive, impose a number of complicated and burdensome Federal requirements in connection with the use of Federal funds, and limit States' and transit providers' flexibility to prioritize and address State and local transportation issues in their transportation plans. At the same time, States have developed substantial transportation expertise and quite capable of assuming more responsibility with respect to managing their own programs, without Federal oversight.

A number of States believes Federal excise taxes collected from their constituents should simply be returned to and managed by the State, rather than channeled through the Federal bureaucracy. This proposal would examine the extent – if any – of State interest in an alternative to the highway and transit program in its current form.

Description of Proposal

The Secretary would establish a pilot program through which up to five States could “opt out” of the FIH, MM, and ME Programs, freeing them from onerous requirements under Title 23 and Title 49 in exchange for their loss of a small percentage of the Federal funding that they would otherwise receive. Participating States would receive back up to 90% of the apportioned formula funding to which they would otherwise be entitled, all of which would be deemed non-Federal for purpose of Title 23 and Title 49 requirements, with the exception of Davis-Bacon prevailing wage laws, consistent with Administration policy to neither expand nor contract Davis-Bacon protections. In cases where the participating State's boundaries encompassed a portion, but not all, of the functional boundaries of a metropolitan area eligible to receive MM funding (e.g., Kansas City, which is bisected by the Kansas-Missouri border), the opting-out State would receive its proportional share of the funding attributable to the metro area based on the MM apportionment formula²⁰. Opt-out States would be eligible to apply for FIH and MM discretionary funding.

On a periodic basis, opt-out States would receive cash payments to liquidate estimated new outlays made under the opt-out program. Cash to liquidate obligations of funds made available

²⁰ Assume, for example, that 60% of Kansas City's allocation of MM formula funds were based on Missouri-based factors, and the remaining 40% were based on Kansas-based factors (e.g., 60% of Kansas City metro area VMT took place in the Missouri portion of Kansas City and the other 40% took place in the Kansas portion). If Missouri were selected to participate in the opt-out program, the State of Missouri would receive back up to 90% of all of the apportioned formula funding to which it would otherwise be entitled. This would include 90% of its share of the Kansas City MM funding (i.e., 90% of the 60%). The Kansas City Metropolitan Transportation Board would retain the 40% “Kansas share” of the original Kansas City MM allocation, and any remaining funding would be retained by the Highway Trust Fund.

prior to the State's participation in the opt-out pilot would continue to be liquidated based on claims from the grantees.

As a condition of the opt-out agreement, the State would commit to expending all returned funds on surface transportation projects. Other parameters of the pilot program would be determined through a joint rulemaking by the Department of Transportation, the Treasury, and the Environmental Protection Agency ("EPA").

The rulemaking would solicit input regarding implementation issues, including (but not limited to) the following:

- Participant selection criteria, which may include the State's (a) plan for managing its surface transportation program, including how the State will meet the needs of metropolitan areas, including multi-state metropolitan areas, (b) measurable objectives and performance standards in areas such as congestion reduction, safety, and the environment for facilities located in FIH and MM Program areas, and (c) surface transportation safety requirements, including the Strategic State Highway Safety Plan pursuant to 23 U.S.C. § 148 and Transit State Safety Oversight program pursuant to 49 U.S.C. § 5330;
- Limits, if any, on the use of funds returned to States that opt-out (beyond a requirement that funds be spent on surface transportation projects);
- Grounds upon which the Secretary would terminate a State's participation in the pilot program; and
- Maintenance requirements for highway and transit systems of Federal interest.

Tolls and Direct Pricing of Road Use

Rationale for Proposal

Gasoline and diesel taxes have traditionally served as the principal sources of funding for the Federal surface transportation program, but they appear increasingly poorly suited to meet our current and projected transportation needs. Among other things, various experts now widely acknowledge that the current gas tax model:

- Does little or nothing to directly address growing congestion and system unreliability, and associated environmental impacts (e.g., congestion's role in increasing emissions of particulate matter, nitrogen oxide, and CO₂);
- Is inconsistent with other Federal policies intended to substantially reduce gasoline and diesel fuel consumption;
- By and centralizing spending decisions and failing to provide strong signals where traffic demand is greatest, encourages funding decisions to be based on political compromise rather than underlying economics or performance-related goals and outcomes;
- Often precludes directly charging for road use, despite road pricing's proven environmental and mobility benefits; and
- Fails to provide strong incentives for effective technology development and deployment.

For these and other reasons, States might in many cases prefer to finance highway projects through the use of direct user charges rather than the gas tax. Moreover, the Administration believes that road pricing is a highly underutilized but powerful tool improving mobility and environmental quality. Federal law currently prohibits States from imposing tolls on most Federal-aid highway facilities, but does nothing to prohibit States from generating revenues from taxes that may have nothing or little to do with using transportation systems. This provision would remove the general tolling prohibition and replace it with the simplified regime described below.

Description of Proposal

The reauthorization law would remove the general prohibition of tolls and pricing on Federal-aid highways, allowing States to toll or price any highway eligible to receive aid under the FIH or MM Programs. States and localities would be permitted to impose tolls on any Federal-aid facility and could authorize either public or private entities to operate the facilities and collect toll revenues. However, Federal law would condition each toll-collecting entity's use of toll proceeds, allowing greater flexibility for facilities using congestion pricing than for those using simple revenue tolling. Note that this proposal is not meant to imply that road pricing should replace the Federal gas tax or revenue sources currently employed by state and local governments. Road pricing should be one of many options available to Federal, State, and local policy makers for addressing future transportation challenges.

Revenues from tolls would be required to be first used for debt service, a reasonable return on private investment, and operation and maintenance costs on the tolled facility. For an uncongested facility – that is, a facility on which the posted speeds are generally maintained

(Level of Service – “LOS” of “C” or better)²¹ – any excess revenues could be used in the following order: (a) for funding of capital improvements needed on the tolled facility; (b) for funding of capital improvement on the corridor; and finally (c) for funding of any capital improvements needed on the FIH system in the State. For a congested facility – that is, a facility on which, absent pricing, speeds are somewhat reduced, generating crowded conditions (operations at a LOS of “D” or worse) – any excess revenues generated by tolling or pricing on that facility would be available for any purpose that was eligible to receive assistance under Title 23 or Title 49. Therefore, any State that emphasizes pricing in its tolling strategies will be rewarded with a greater flexibility in Federal rules regarding the uses of excess revenues.

For purposes of determining whether the facility is “congested” or “uncongested,” the LOS of the project would be determined at the time that tolling is implemented on the facility. A State would be able to petition at any time to have the facility reclassified as “congested” (i.e., LOS of D or worse) or “uncongested” (i.e., LOS of C or better).

Roadways that were tolled under this new exception would need to use electronic toll collection (“ETC”). If the roadway also employed cash collection (i.e., toll booths), cash-collection facilities could not impede the operation of the ETC lanes and could not create unsafe operating conditions on the toll facility. Operators would be required to justify to USDOT the need for cash collection facilities. USDOT would encourage, but not require, tolled facilities to use variable tolls and implement demand management activities.

²¹ LOS is a quality measure describing operational conditions on highways in terms of speed, travel time, freedom to maneuver, interruptions, comfort and convenience. LOS is characterized by the letters A through F, where A refers to the most favorable driving conditions and F the least favorable. The LOS standards or levels are published in the Highway Capacity Manual (“HCM 2000”) put out by the Highway Capacity and Quality of Service Committee of the Transportation Research Board. LOS aids in the decision-making process by providing a relative evaluation of design and operational improvements for managing congestion and growth.

Innovative Pricing on Federal Lands Highways

Rationale for Proposal

Variable pricing, including the use of P3s, has proven to be a valuable tool for improving the operations and management of highways and highway networks. Where Federal Lands highways function as major commuter routes and/or provide access to many Federal lands visitors, innovative pricing techniques, similar to congestion pricing projects, could offer many of the same operational and revenue benefits to Federal Lands highways and highway networks as they do to State and local highways. The purpose of this provision is to create a pilot program for five demonstration projects to highlight the benefits that innovative pricing may offer to Federal Lands highways.

Description of Proposal

Federal law would be clarified to explicitly authorize the use of innovative pricing methodologies with core Federal Lands Highway and Transit (“FLH&T”) Program partners on roadways that either function as major commuter routes and/or provide access to highly-visited Federal lands. The authorization would enable the agencies to utilize P3s for this purpose and to convey long-term easement interests in Federal lands as needed for such projects. USDOT would be authorized to work with the FLH&T core partners to identify up to five Federal Lands pricing projects for the operation and/or maintenance of those highways and for any improvement projects needed in conjunction with innovative pricing. These projects may include the use of P3s. To be considered, projects would need to be eligible for assistance under Chapter 2 of Title 23. At least two and no more than three of the projects would be required to serve urban areas with populations exceeding 500,000.

In authorizing innovative pricing, the Federal Lands management agencies would be able to authorize the imposition and collection of user fees on the facilities, which could vary by level of congestion, season, time of day or otherwise as appropriate to manage the demand of the facility. Additionally, the core FLH&T Federal agencies could authorize the use of present and future Federal Lands funding to pay for any P3 agreements. For an uncongested facility – that is, a facility on which the posted speeds are generally maintained (Level of Service – “LOS” of “C” or better) – toll revenues could be used in the following order: (a) for the maintenance and operation of the facility; (b) for operation of, or improvements to, any adjacent Federal Lands Highway facility or facilities of which the roadway is a part, or that the roadway services; then (c) for operation of, or improvements to, other Federal Lands Highways owned by the core FLH Federal agency in the same metropolitan area or state. For a congested facility – that is, a facility on which, absent pricing, speeds are somewhat reduced, generating crowded conditions (operations at a LOS of “D” or worse) – any excess revenues generated by tolling or pricing on that facility would be available for any purpose that was eligible to receive assistance under Title 23 or Title 49. Therefore, any Federal Lands management agency that emphasizes congestion pricing in its tolling strategy would receive greater flexibility in Federal rules regarding the uses of excess revenues.

Transportation Infrastructure Finance & Innovation Act (“TIFIA”) Reform

Rationale for Proposal

The TIFIA Program is a critical tool in USDOT’s ability to leverage private sector resources in transportation infrastructure financing²². In conjunction with the financing arrangements being used by States today to deliver new projects, the proposal increases the Department’s flexibility to structure credit support for vital projects expected nevertheless to produce little revenue in the early years of operation. This proposal would reform the TIFIA program to broaden the availability and enhance the attractiveness of TIFIA credit assistance.

Description of Proposal

The TIFIA Program would be modified in the following manner:

- **Repayment Flexibility**: TIFIA repayment schedules, deferral periods and maturity dates would be approved on a case-by-case basis, not prescribed by statute, with a deferral preference for facilities financed in part or primarily by users.
- **Federal Requirements**: TIFIA credit assistance in the form of loan guarantees or lines of credit would not be subject to Title 23 and Title 49 requirements, with the exception of Davis-Bacon prevailing wage laws, consistent with Administration policy to neither expand nor contract Davis-Bacon protections.
- **Direct Pricing**: TIFIA credit assistance to be repaid from direct facility pricing would be available for up to 50% of eligible project costs. If TIFIA credit assistance were to be repaid from direct facility pricing and were provided for 33% or less of eligible project costs then such TIFIA credit assistance would not be subject to Title 23 or Title 49 requirements apart from Davis-Bacon provisions.
- **Guarantees and Lines of Credit**: Loan guarantees and lines of credit would be available to supplement a secured loan provided for 33% or less of eligible project costs, as long as the total amount of TIFIA credit assistance did not exceed 40% of eligible project costs.

²² The TIFIA statute authorizes USDOT to provide Federal credit assistance to major transportation investments of critical national importance. TIFIA credit assistance must be in the form of a direct loan, a loan guarantee or a line of credit and total credit assistance may not exceed 33% of project costs. To be eligible, a project must cost the lesser of at least \$50 million or 33% of the State’s annual apportionment of Federal-aid funds and must be supported in whole or in part from user charges or other non-Federal dedicated funding sources. For direct loans, scheduled repayments must commence no later than five years after the date of substantial completion of the project. Final maturity of the loan may be no later than 35 years after the date of substantial completion of the project.

Rest Area Quality Improvement Pilot Program

Rationale for Proposal

Section 111(a) of title 23, U.S.C. prohibits "automotive service stations or other commercial establishments for serving motor vehicle users" on the rights-of-way of the Interstate system. The only exception is the sale of items through vending machines operated by the State. The law was enacted to prevent an unfair advantage to businesses located directly on the Interstate over those that are located at an exit off the Interstate. However, since the enactment of Section 111(a), the physical condition of many rest areas has declined, and there has been increasing concern over public safety at rest areas. This proposal creates a pilot program to permit up to 10 States that have seen substantial deterioration of the quality and safety of their rest areas to enter into agreements with the private sector to rehabilitate and operate designated rest areas. These agreements could improve rest area quality, as well as provide a source of additional capital for transportation system improvements by dedicating excess revenues for the rehabilitation, operation and maintenance of the Interstate System.

Description of Proposal

- Creates a pilot program under 23 U.S.C. § 111(a) to allow up to 10 States to enter into agreements with the private sector to rehabilitate, operate, and maintain designated rest areas.
- In return for the right to enter into a franchise agreement, the State would need to dedicate any excess revenue, after debt service, a reasonable return on investment, and rehabilitation, operation and maintenance, to projects eligible under Title 23 to rehabilitate, operate, or maintain the Interstate system.
- As a component of the pilot, States would be asked to assess the quantity and quality of parking facilities for commercial trucks, and to the extent practicable, incorporate improvements to the truck parking facilities into the rest area franchise agreements.

Delegation of Oversight Over Outdoor Advertising Control ("OAC")

Rationale for Proposal

The Highway Beautification Act and its implementing regulations established broad national standards for the control of outdoor advertising ("OAC"). Within those broad parameters, the law gives States the ability to adopt controls tailored to their own needs. As a result, outdoor advertising controls vary widely from State to State, and the role of FHWA in providing consistent national OAC standards is limited. FHWA's involvement in a State's OAC program administration is often redundant and counterproductive. This proposal would remove the FHWA from day-to-day administrative involvement in State outdoor advertising control programs and would reinforce the principle that the States are directly responsible for OAC compliance. The result would be a streamlined administrative structure and more effective use of FHWA resources.

Description of Proposal

- Creation of an option for assignment of all administrative responsibility for OAC to the States, similar to the Section 6004 of SAFETEA-LU assignment of categorical exclusion responsibilities;
- Maximization of State control over the program through the assignment process; and
- Building on current laws, a requirement for States that take on the responsibility to certify annually to FHWA their compliance with OAC regulations, with a focus on safety considerations.

Transition Towards a Sustainable User Charge System

Rationale for Proposal

There is widespread agreement that the present fuel tax is not a sustainable long-term revenue source for Federal or State surface transportation programs. Increasing vehicle fuel efficiency, adoption of alternative fuels, taxpayer resistance to increasing the fuel tax, and the weak link between the fuel tax and actual highway use all suggest that in the long term the fuel tax should be replaced by more sustainable sources of transportation revenues. Pilots of various alternative approaches are underway in the U.S. and around the world, and the next piece of authorizing legislation should greatly expand the pace and scope of experimentation. These experiments provide a basis for understanding many of the technological and institutional issues that must be addressed in moving from the fuel tax to an alternative charging regime that is more closely connected with the true costs of travel.

Description of Proposal

USDOT and the Treasury, in consultation with automotive, trucking, and other industry groups, would develop a transition policy guide and recommendations. The analysis would focus on the following:

- An assessment of the pros and cons of various charging technologies;
- Alternative ways to collect charges from the users;
- Tradeoffs between protecting the privacy of users and being able to audit charges imposed on individual users;
- Risks of evasion associated with various approaches;
- Reliability and security of various components of the system and ways to mitigate component failures;
- Relative impacts of various charging schemes on different user groups, including commercial motor vehicles;
- Issues associated with allowing various charging systems to vary, whether by time-of-day or otherwise, to reflect congestion, safety, and/or environmental costs;
- Relative advantages and disadvantages of centralized charging systems as compared to State, local and private sector operated systems;
- Issues associated with retrofitting vehicles, including the security of such equipment, the cost of installing the equipment, the time required to retrofit all vehicles, and how the equipment would be paid for; and
- The relative cost of administering various charging systems, including collection and enforcement costs.

Other Regulatory Reform Proposals

Buy-Out of the “Federal Interest”

Rationale for Proposal

Currently, acceptance of Federal assistance creates a “Federal interest” that subjects transportation projects and their sponsors to various Federal requirements. Such requirements (such as maintenance requirements under 23 U.S.C. §116, signage requirements under 23 U.S.C. §§109 and 402, and right-of-way disposal requirements under 23 U.S.C. §156) may apply in perpetuity, regardless of the amount of Federal assistance received or when such assistance was received, and can thus create regulatory burdens out of proportion to the level of Federal investment. In addition, in some cases an applicant decides that Federal assistance is not required for a project and the applicant wishes to de-federalize the project.

This proposal would enable States, localities, and other jurisdictions that receive Federal assistance to apply their own regulations, if any, instead of Federal requirements once repayment has occurred.

Description of Proposal

This proposal would amend the transit and highway titles to establish the terms by which a Federal-aid recipient could “buy out” the Federal interest in a proposed or existing project and thereby avoid certain Federal requirements arising from the use of Federal transportation funds.

If a project carried out by a State or locality through the transit or highway titles were currently being, or was previously, constructed or advanced in whole or in part with Federal funds – and if the State or locality found Federal requirements to be unduly burdensome or costly and without commensurate benefit – the recipient could repay the Federal funds associated with the undertaking, net of certain adjustments, and carry out the activity subject only to State requirements. The cost of redeeming the Federal interest would be the actual amount of the Federal investment, unadjusted for inflation. Repayment and release from Federal requirements would not affect mitigation commitments previously incurred in connection with a project.

Payback of Federal funds associated with the project to be de-federalized would occur under the existing mechanism for crediting funds related to overpayment²³.

²³ Specifically, the contract authority and associated obligation authority would be applied to another Federal-aid project or projects, utilizing the same category or categories of funds, and generally in the same geographic area(s). Federal-aid payments made to the State would be collected as a reverse reimbursement invoice through the current FHWA payment system, and retained in the Highway Trust Fund cash account. Such amounts as de-obligated under this provision would be available for immediate obligation to be used to cover overruns. This re-obligation would need to occur in the same fiscal year to reserve both the contract and obligation authorities.

Clarified Eligibility for Pre-Construction Activities Prior to NEPA Review

Rationale for Proposal

The FHWA and FTA wish to better align their limitations on actions during the environmental review process with the provisions in the Council on Environmental Quality (“CEQ”) regulation and related case law. This will eliminate unnecessary restriction and will clarify which project activities may be performed prior to completion of review under the National Environmental Policy Act (“NEPA”). The change also will eliminate any uncertainty about the eligibility of pre-NEPA activities for Federal assistance if a project is approved for Federal funding.

Description of Proposal

Title 23 would be amended in the following ways:

- Allow States to undertake final design activities at State expense, making such work eligible for Federal-aid reimbursement only if FHWA or FTA subsequently approves the project;
- Allow acquisition of or option to purchase land or other interests in real property during NEPA where the transaction itself does not cause a change in the area’s land use or cause adverse environmental effects; and
- Prohibit the use of eminent domain for such early acquisitions.

Mitigation-Based Alternative to the Environmental Decision-Making Process

Rationale for Proposal

The current environmental review process requires project sponsors to navigate a complex regime of procedural and substantive laws. It currently takes almost 7 years on average to reach decisions on projects that have significant environmental impacts because of the complex interrelationships among the various Federal and State environmental requirements, the linear nature of the current process and the time required to finance, design and construct the project. If the cost of a \$100 million project increases at 10% a year over that net period of time, the project will cost almost \$195 million by the time a Record of Decision (“ROD”) is reached.

This proposal would permit the Secretary to establish an alternative decision-making process based on negotiated mitigation agreements that address anticipated project impacts for up to 20 critical projects of national economic significance. Projects unable to successfully conclude the alternative process would continue to proceed to a decision under otherwise applicable Federal environmental processes. It may be well worth substantially more mitigation costs to avoid even half of the delays associated with reaching an ROD under current processes, during which mitigation dollars are being absorbed by process costs.

The objective is to find more efficient methods of decision-making and conducting environmental reviews that enhance problem-solving and decision-making options and reduce the time and costs required for the process. The vision includes creating incentives for sponsors to enter into early agreements on mitigation approaches and giving non-sponsor parties the legal authority to represent their various constituencies. By providing a mechanism for sponsor and non-sponsor parties to negotiate and reach agreement on a proposal for agency action, non-sponsor parties would be given a more effective means to influence mitigation terms and conditions. Sponsors would have the means to achieve more certainty about project costs and the time required for environmental review.

This proposal would broaden the range of potential solutions beyond those afforded by current procedures, which sometimes foreclose opportunities for better transportation and environmental outcomes. By encouraging adaptive management strategies that would be designed to respond to actual impacts in the future, the proposal also will reduce the need to make project decisions based on limited current information or uncertain predictions. Environmental and transportation results would be improved.

Like the negotiated rulemaking process, this proposal reflects the philosophy that direct negotiation among affected stakeholders facilitates better solutions. Adoption of this alternative procedure would reflect the maturation that transportation agencies have attained over the years in cooperatively engaging relevant agencies and the public in a collaborative search for environmentally responsible solutions to the nation’s transportation problems.

This proposal outlines basic elements for an alternate negotiation-based process. As this concept is developed in more detail, a number of key points will be resolved through the process of interagency and public dialogue.

Those include:

- Incorporating appropriate public involvement procedures;
- Integrating environmental impacts and alternatives analyses into the negotiation process;
- Defining the parties necessary to the negotiation process; and
- Identifying the most effective procedures and best structure for a negotiated agreement, so that the alternate process fosters effective, timely, good-faith negotiations that lead to a binding agreement that includes all necessary Federal permits and approvals.

Description of Proposal

- Permit FHWA/FTA, at the request of the project's sponsor, to designate a broadly-representative group of stakeholders (the "Stakeholders") and initiate consultation with them for the purpose of developing a memorandum of agreement ("MOA") that determines the expected agency action, project impacts, and the mitigation needed to compensate for those impacts. Prior to the commencement of any consultation, the length of the consultation shall be established by the sponsor and extensions would only be granted for good cause as agreed to by the Secretary.
- Define the required Stakeholders to include all Federal agencies with jurisdiction over the project or special expertise regarding effects of the project, as well as interest groups with a substantial interest in the project outcome (as defined by the lead agency – either FHWA or FTA – in consultation with the Federal agencies with jurisdiction or expertise). Require that these interest groups include at least 3 public or non-profit groups that reflect resource, environmental, and/or community interests. Require FHWA/FTA to invite the participation of State agencies with jurisdiction over the project.
- Require all Federal agencies to work cooperatively with FHWA/FTA and the project sponsor to develop the MOA.
- Allow parallel proceedings so that the failure to achieve an MOA would not delay the project. A FHWA/FTA election to use the alternative process could be made at any time during the environmental review process.
- Require the Federal agencies to give joint public notice of the proposed MOA and provide an opportunity for public comment.
- Develop appropriate public involvement/hearing requirements.
- Provide that execution of an MOA by the Stakeholders after consideration of public comments constitutes their agreement that the lead and cooperating Federal agencies have: (1) satisfied all relevant Federal statutory requirements, including NEPA approval, and (2) issued all necessary Federal licenses, permits, and approvals within their control. Execution by the project sponsor would constitute its agreement to accept all terms and

conditions in the MOA, and would create a rebuttable presumption that all Federal environmental requirements have been met.

- Require public notice and an opportunity for comment prior to amendment of any mitigation or other key (i.e., quid pro quo) commitments in the MOA.
- Authorize the use of the alternative process on any project, regardless of the level of NEPA analysis for a class of action, at the Secretary's discretion.
- The proposal would not apply to permitting requirements of the Clean Water Act or the Rivers and Harbors Act.

Performance-Oriented Pilot (“POP”) Program

Rationale for Proposal

Traditionally, the Federal surface transportation program has focused more on process than on outcome, requiring grant recipients to comply with a broad array of procedural requirements (transportation planning, conformity, etc.) rather than quantifiable performance standards. This paradigm, while well-intended, often delays projects and increases their costs dramatically without providing any reasonable assurance that the projects will improve overall environmental and system performance. However, several of the problem areas are amenable to substantial improvement through legislative change. For example, legislation could provide for performance standards that are clearer and explicitly authorize the balancing required in the case of transportation projects and environmental impacts. The POP Program would represent an attempt, on a limited pilot basis, to shift the Federal transportation focus from process to outcomes, and to provide better accountability for environmental and transportation results at the State and Federal levels.

Description of Proposal

POP Program Overview. Within the POP Program, participating entities, including States and/or metropolitan areas (collectively, “POP participants”), would agree to meet performance standards established for a variety of planning, environment and transportation-related areas, ranging from air quality to system condition and performance. In exchange for meeting these performance targets, USDOT would grant POP participants substantial relief from regulatory procedures, including the elimination of most Federal transportation planning requirements, flexibility regarding the transportation conformity process, and the establishment of a public interest standard under Section 4(f). POP agreements between USDOT and participating entities would last for the length of the full authorization period (i.e., Fiscal Years 2010-2015).

Eligibility for participation. Up to 10 entities, including States and/or any metropolitan areas eligible for Metro Mobility (“MM”) funding, could participate in the POP Program. A State’s application to the POP Program would require the concurrence of the Governor, and a metro area’s application would require the concurrence of the area’s Metropolitan Transportation Board (“MTB”).

Performance management. Within the POP Program, as in the Federal Interest Highway (“FIH”) and MM programs, USDOT would designate performance areas (e.g., condition of pavement, bridges, and transit infrastructure, travel delay, transportation safety, air and water quality, availability of traveler information) and quantifiable measures (e.g., travel time index, number of highway fatalities, emissions of particulate matter) that POP participants would use to track progress in each area. Additionally, after consultation with appropriate Federal and State agencies and MPOs, USDOT would set a performance target/standard that POP participants would need to achieve for each measure. For planning and environment areas, the performance standards would be consistent with the goals of relevant environmental laws such as the Clean Air Act. For transportation systems, the measures would meet the requirements of the Federal Interest Highway (“FIH”) and MM Programs. Performance standards would differ among participating States and metro areas to take into account differences in jurisdictional needs and

circumstances. USDOT would establish the planning, environment, and transportation system performance standards through a rulemaking, in consultation with States, metro areas, and other interested parties; this rulemaking would require public notice and comment. USDOT would also retain the option of adjusting the target, if needed, after public notice and comment. Participants would still be expected to conduct benefit cost analyses on major projects with a total cost at or more than \$25 million.

Flexibilities granted to participants. In exchange for meeting USDOT's planning, environment, and transportation system performance standards, POP participants would be granted the following regulatory relief:

1. *Elimination of most Federal planning requirements.* The only Federal transportation planning requirement imposed on POP participants would be a mandate to allow for public participation in the transportation planning process. POP participants would no longer be required to produce long range plans, transportation improvement programs, or unified work programs, nor would they be subject to triennial review by either FHWA or FTA. They would not be subject to Federal fiscal constraint requirements. They would, however, remain eligible for Federal technical assistance.
2. *Streamlining the conformity process.* POP participants would be granted the authority to use alternate procedures to meet air quality conformity requirements. Process alternatives would include one or more of the following: (a) alternatives to planning-level conformity requirements; (b) creation of a series of exemptions from air quality conformity for projects meeting certain criteria (net benefit²⁴ or *de minimis* adverse effects); (c) authorization to process the remaining projects under general conformity rules, including project-level analysis to determine effects (would permit offsets to be used where effects are not *de minimis*); and (d) replacement of the conformity process with air quality performance measures.
3. *Public interest standard under Section 4(f).* Building on the revisions enacted in SAFETEA-LU section 6009, POP participants' projects would be subject to a "public interest" standard under Section 4(f), rather than the existing "no feasible and prudent alternative" standard. Under this new standard, 4(f) analysis would require an evaluation of impacts on all environmental resources (human and natural environment, excluding economic impacts) and a balancing of potential 4(f) adverse impacts against potential adverse impacts to other protected environmental resources based on the value, importance, type of impact, and level of impact to each.

Penalties for failure to meet standards. As in the FIH and MM Programs, POP participants would be required to document, publish annually, and justify their progress toward meeting their established performance targets. In the event that a POP participant failed to meet one or more of its targets, USDOT would place the participant on probationary status, and would grant the participant an additional year to achieve the necessary progress. In cases where the POP participant failed to meet performance standards, USDOT and the POP participant would review

²⁴ "Net benefit" could cover two types of projects: (1) projects with multiple kinds of air quality impacts, some negative and some positive, that balance each other out; and (2) projects that may have some negative air quality impacts at some point in the construction-operations continuum, but for which the positive impacts over the full life of the project balance out the negative ones.

project impacts to determine any need for adjustments to related environmental mitigation efforts. In all cases, if the jurisdiction failed to meet one or more of its performance targets for two consecutive years, it would lose its eligibility to participate in POP and, if appropriate, post-POP remedial measures would be required. Jurisdictions that lost eligibility in this manner would have the option to apply for reinstatement into POP.

NEPA Process Reforms

Rationale for Proposal

This proposal targets statutory changes that could introduce important efficiencies into the decision-making process and help eliminate some recurring problems in the environmental review process for transportation projects. While the revisions enacted through SAFETEA-LU clarified the decision-making process and authorities in certain areas, such as identifying purpose and need and authority to select the range of alternatives, those changes are not applicable to all NEPA classes of action and are not broad enough to resolve areas addressed by this proposal. This proposal would clarify what constitutes a “reasonable alternative” under NEPA for transportation projects, and how certain key decisions are made. The proposal would authorize a new method of NEPA documentation that would be more efficient, but still would be consistent with NEPA objectives for public and agency involvement in decision-making. The proposal also would extend the scope of categorical exclusion authority that USDOT could assign to the States, while retaining the qualifying criteria presently in 23 U.S.C. § 326 and FHWA guidance.

Description of Proposal

Revise the environmental review process²⁵ to:

- Clarify applicable standards for determining “reasonable alternatives” for NEPA review of all transportation projects that require an alternatives analysis. The objective would be to build upon the authority in 23 U.S.C. § 139(f) by clarifying that the lead agency’s authority to decide the range of alternatives is independent of the applicability of the project development procedures in 23 U.S.C. § 139, and by articulating factors that the lead agencies for transportation projects may rely on in determining what constitutes a reasonable alternative under NEPA. The list of factors would not be exclusive, and the lead agencies would hold the authority to determine whether the factors apply to a project. The factors would help eliminate disputes about what can be considered when selecting alternatives for detailed analysis. The factors would be applied to determine which of the alternatives that meet project purpose and need also meet appropriate standards of feasibility and reasonableness. A determination of the appropriate factors to include in the proposed statute, and the degree to which the factors ought to integrate considerations from substantive statutes such as Section 4(f) and Section 404, will be made after further input from Federal agencies and the public.
- Authorize FHWA and FTA to comply with NEPA via a simplified process for environmental impact statements that permits the agencies to combine the Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) into a single document, with opportunity for administrative appeal to the Secretary. This proposal is part of an overall effort by FHWA to improve NEPA documents and reduce the time it takes to prepare documents and reach an informed decision. The proposed process would focus on issues of importance through an enhanced scoping process. The DEIS would

²⁵ While 23 U.S.C. § 139 (Section 6002 of SAFETEA-LU) provides measures similar to some of the listed concepts, this proposal would strengthen the mandates and clarify the Secretary’s discretion to apply select measures to the extent determined appropriate by the Secretary, to transportation projects processed with an EA or documented CE.

identify the preferred alternative in order to allow the public and other agencies a reasonable opportunity to comment. The FEIS would then constitute the decision document. The administrative appeal process would need to accommodate the CEQ referral process. Encourage project sponsors to develop proposed mitigation measures that would reduce overall impacts of the proposed action and promote environmental stewardship.

- Create a formal scoping decision point and a mandate to lead agencies to focus the scope of NEPA documents and determine the significant environmental issues related to the proposed action; provide that the lead agencies' decision on the significant environmental issues and the scope of the evaluation to be done on those issues, reached in accordance with 40 CFR 1501.7(a), is subject to reconsideration only if significant new circumstances or information arise which bear on the proposal or its impacts. This proposal will build on the language presently in 23 U.S.C. § 139 and CEQ NEPA regulation, and will create a clear and enforceable mandate to keep transportation project reviews focused on issues of potential environmental significance. The objective of this proposal is to eliminate the frustrating delay and duplication of effort that often occurs with transportation projects when agencies or the public request the lead agencies to revisit scoping decisions even though there is no new information or circumstance to justify doing so.
- Broaden the categorical exclusion assignment authority in 23 U.S.C. § 326 by amending it to permit assignment of responsibility for all CEs to the States (currently only "c" and specified "d" list CEs are assignable). This builds on, and is subject to, the assignment authority already in place as a result of SAFETEA-LU. This proposal will retain the application and review process presently in use for assignment of CE authority to States, as well as other requirements presently in the statute.
- Extend the current pilot authority for Section 6005 of SAFETEA-LU for an additional 5-10 years, and allow additional States to apply for the four open slots.

Acronyms

Acronyms

The following acronyms and terms are used in many cases without definition in this document:

“CFR”	Code of Federal Regulations
“EPA”	Environmental Protection Agency
“FHWA”	Federal Highway Administration
“FMCSA”	Federal Motor Carrier Safety Administration
“FY”	Fiscal Year
“FTA”	Federal Transit Administration
“HTF”	Highway Trust Fund
“NEPA”	National Environmental Policy Act
“NHTSA”	National Highway Traffic Safety Administration
“RITA”	Research and Innovative Technology Administration
“SAFETEA-LU”	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
“the Secretary”	The U.S. Secretary of Transportation
“State DOT”	State Department of Transportation
“TEA-21”	Transportation Equity Act for the 21st Century
“U.S.C.”	United States Code
“USDOT”	United States Department of Transportation

